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In Brief

THE MAGAZINE OF CASE WESTERN RESERVE UNIVERSITY SCHOOL OF LAW

Dean Lawrence Mitchell explains why
he chose to lead the School of Law.



SCHOOL OF LAW

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SCHOOL OF LAW

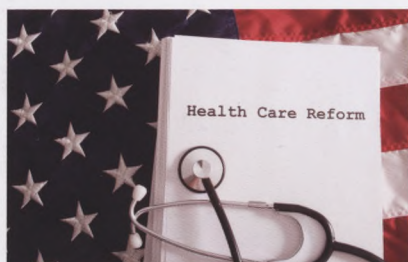
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FROM THE DEAN'S DESK

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FROM THE DEAN'S DESK



How do you fall in love with a law school? I had never been to Cleveland before my first interview here in mid-February. Over the course of several months of conversations with faculty, staff, alumni, and officials at Case Western Reserve, I came to understand the beauty of our city and our Law School. It is a place of great talent, accomplishment, enthusiasm, energy, and vision, a law school ready to transform from good to great as we work together toward our future. The position of dean at this Law School rapidly became my first choice of leadership opportunities. By the time I took office on June 1, I was in love.

Part of that love is generated by the doggedness which with all of our constituencies, none more important than our alumni, have continued to support our Law School. Your constancy deserves to be repaid with untiring devotion on all of our parts to create the best law school possible. Among the most valuable experiences of my first months has been meeting so many of you, hearing your ideas about, and passion for, the Law School, hearing your thoughts on how we can and should rebuild. Rebuilding will require work on all fronts.

We have listened to the needs of law firms and law students, and will enhance significantly our already cutting-edge experiential education program. On August 10, I announced the appointment of our first Associate Dean of Experiential Education, whose mandate is to evaluate our CaseArc, clinical, externship, laboratory, and simulation programs and find ways to make them even better.

We will strengthen the special opportunities we provide. Our programs in intellectual property, entrepreneurial lawyering, and representation of creative people are taking on greater dimensions in conjunction with incubators throughout the area. We also are working closely with the Weatherhead School of Management and the Case School of Engineering, as well as the cultural institutions in University Circle and in Cleveland more broadly. In addition to our world-renowned public international law program, we are working to build its equal in private international law and finance.

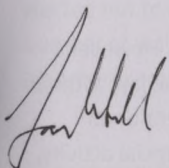
Farther afield, I will be traveling this year to build on our student and faculty exchange opportunities in China, Europe, and Canada, as well as establish new programs in Brazil, Vietnam, and Singapore to ensure that our graduates are prepared to practice in the evolving reality of the 21st century. As part of this effort, and reflecting the international reputation of our law and medicine center, we will be signing an agreement at the request of one of the top ten medical schools in China to build their law and medicine program. This initiative, like others, will create opportunities for our faculty and students and, eventually, jobs for our graduates.

As you watch us over the coming years, you will see many changes, even as we stay true to our great history. As you know, we have already asked you to participate in our alumni interview program for applicants to our Law School, both to establish you as the faces of Case Western Reserve and to ask you to evaluate those applicants you believe to have the qualities of leadership not visible in test scores and grades.

We haven't ignored the difficulties our students face in the job market. Our career staff and I have been traveling to major cities throughout the country, meeting with hiring partners and explaining, with some success, why our cutting-edge experiential education program makes Case Western Reserve graduates precisely the lawyers they say they need to hire.

I have learned a lot over the last several months. I understand that many of you feel as if we have let you down in the past, or even simply ignored you. For that, I apologize. But I can promise that I will do all that I can to ensure that you will not have reason to feel that way during my deanship. I have committed to be here until the job of making our Law School the best it can be is done, however long that may take, but that job is impossible without engaging you. I have traveled, and will be traveling, around the country four or five times a year to meet with those of you who live and work in our largest centers of alumni population, and will do my best to get to know those of you whom life has taken to other areas of the country and the world. And, please know, I am always eager to hear your comments, to receive your emails, letters, and phone calls. Your input will only help us to grow stronger.

Great cities have great law schools. I have fallen in love with both our city and our Law School, and dedicate myself to working together with all of you to make Case Western Reserve the best it can possibly be.



Lawrence E. Mitchell

Dean

Joseph C. Hostetler - Baker & Hostetler Professor of Law

A CONVERSATION WITH DEAN MITCHELL, THE SCHOOL OF LAW'S 17TH DEAN

DEAN LAWRENCE MITCHELL
EXPLAINS WHY HE CHOSE
TO LEAD THE SCHOOL OF
LAW, ITS GREATEST ASSETS
AND GOALS FOR THE
FUTURE

WHAT QUALITIES ATTRACTED YOU TO THE SCHOOL OF LAW?

I was impressed not only by the law school's great and long tradition of being a significant leader in legal education and legal scholarship, but also by the breadth and quality of its international programs, its law and medicine center, its law technology and the arts center, and the extraordinary dedication of its faculty and staff to experiential education. I thought that the raw materials of the institution were spectacular and that was enough to get me interested.

HOW WILL YOUR EXPERIENCE SERVING AS A FACULTY MEMBER FOR 20 YEARS HELP YOU LEAD THE LAW SCHOOL?

It takes one to know one. I believe I have as good an understanding as anybody of how faculties work; how scholars and teachers think; and how faculties make decisions and engage in the kind of policy work for the institution in which they have to engage. I think that background puts me in a good position for me to help the faculty achieve even greater heights.

WHILE AT GW, YOU FOUNDED THE CENTER FOR LAW, ECONOMICS AND FINANCE. HOW ESSENTIAL IS BUSINESS LAW IN TODAY'S LEGAL MARKET?

All of us as academics have a tendency to think our fields are the most important. However, I think it's fair to say that it's very difficult today to engage in almost any aspect of the law without confronting issues in business and finance. Whether it's a matrimonial arrangement or an estate matter, or litigating cases which frequently involve corporate activity or financial activity, there is often some convergence with the language of business and finance. And it goes without saying that counseling financial institutions has become an even bigger business for lawyers.

YOU ALSO FOUNDED AN LL.M. PROGRAM IN BUSINESS AND FINANCIAL LAW AT GW. THE SCHOOL OF LAW CURRENTLY OFFERS FOUR LL.M. DEGREES. HOW ESSENTIAL ARE THESE PROGRAMS TO STUDENTS AND TO LAW SCHOOLS?

That depends on the program and the law school. LL.M. programs should only be created in areas of real substantive strength. This school was very careful in creating its LL.M. programs for foreign students and in areas where we have a significant reputation. I think they are incredibly enriching and provide perspectives to other JD students that wouldn't otherwise exist.





WHAT WAS YOUR MOST RECENT SCHOLARSHIP FOCUSED ON?

I spent much of the past decade investigating the relationship between the stock market and productive corporate behavior. My best paper in the series took it to a different level of empiricism and theory and looked at the direct relationship between the stock market and GNP growth.

WILL YOU MISS TEACHING?

Every happy teacher misses teaching. That said, I don't think I could do justice to my students if I were to teach as dean, nor could I properly do justice to the job as dean. Therefore, I have elected not to teach for now and into the foreseeable future. But I have already created a number of ways in which I will have frequent and sustained interactions with our students. I plan, for example, to have all of our students to dinner at my house.

WHAT EXCITES YOU THE MOST ABOUT BECOMING DEAN OF THE SCHOOL OF LAW?

I love the possibilities that this school provides over the course of my deanship to create opportunities for alumni, faculty, students and staff that they might not otherwise have had. I think good strong leadership and a vision for the future, as well as a real belief in this institution and this city will allow me to help make people's lives better.

WHAT ARE THE GREATEST ASSETS OF THIS LAW SCHOOL?

The greatest assets of this law school are the greatest assets of any law school—faculty, students, staff and alumni. We have a wonderful warm, close knit and supportive alumni body. We have a terrific faculty. I think the staff is absolutely outstanding. And our students are terrific, committed, serious, hard working lawyers in training.



YOU HAVE QUITE AN EXTENSIVE BACKGROUND IN BUSINESS AND FINANCE, IN ADDITION TO YOUR ACADEMIC EXPERIENCE. HOW WILL YOU USE THESE SKILLS TO LEAD THE SCHOOL OF LAW?

I think that my background in business and finance puts me in a good position to be a manager and obviously some portion of the dean's job is administering the law school, managing it, managing its budget and its finances, enhancing the efficiency of the entire operation. These are things with which I'm very comfortable. So in that respect my business background puts me in good stead.

WHAT WAS THE BEST ADVICE YOU RECEIVED AS A YOUNG ATTORNEY?

You never get a second chance to make a first impression. And that's something that's essential for our students to understand. It's very hard to lose a good reputation once you've established it. It's very hard to achieve a good reputation once you've established a bad one.

WHERE DO YOU SEE THE LAW SCHOOL IN THE NEXT SEVERAL YEARS?

Two to three years is too short a period of time to predict. Ideally after five years, maybe six years, the law school will have an even stronger student body than it has now, it will be more well-known for its work in international law, particularly on the private side. We are pursuing a heavily global objective. And our reputation in experiential education, for training students who are ready to be lawyers from the moment they graduate, will have permeated throughout the United States and world. I hope, at the end of my deanship, that we are nipping at the heels of the top 30 law schools.

HAVING LIVED IN WASHINGTON, DC FOR THE PAST 20 YEARS, WHAT HAS BEEN YOUR FAVORITE PART OF CLEVELAND?

My favorite part is the community. I have never felt welcomed more quickly by more people with seemingly genuine warmth than I have since I've been in Cleveland. It's a wonderful and inviting group of people and I'm very happy to be here.

BEFORE ENTERING ACADEMIA YOU PRACTICED FOR SEVERAL YEARS IN NEW YORK. HOW WILL YOUR PRACTICAL AND ACADEMIC EXPERIENCES HELP YOUR DEANSHIP?

When I was in practice I was a transactional lawyer. I did public offerings, debt offerings, mergers and acquisitions, did a lot of venture capital. Doing deals is about making everybody happy or everybody equally unhappy. So I think I learned an enormous amount about what it takes to reach a goal that everybody wants, even though there will be conflicting interests that arise during the course of attaining that goal. I hope that experience will be useful to me in working with the many constituencies that comprise the School of Law.

WHAT DO YOU THINK IS MOST ESSENTIAL FOR LAW SCHOOLS TO TEACH THEIR STUDENTS?

Obviously you teach students the law, you teach them the theory of the law, you teach them the practice of the law. I think the most important thing a law school can teach or reinforce in its students is the need for integrity, honesty and probity, and the need to be true to yourself despite the various pressures that will intrude upon you throughout your career. If you keep your honesty, decency and forthrightness intact, you will always be a good lawyer, as well as a sound person. Lose that, and you will never succeed, nor should you. ■



The Constitutionality of the Individual Mandate in the Affordable Care Act

PROFESSORS JONATHAN ADLER AND ERIK JENSEN
DISCUSS THE CONTROVERSIAL HEALTH REFORM PLAN

Could the federal government require everyone in the United States to purchase a minimum amount of broccoli? It may seem like a ridiculous question, but the answer could determine the outcome of litigation of the Affordable Care Act, the controversial health reform plan enacted by Congress and signed into law last year.

One provision of the law requires most Americans to purchase a qualifying health insurance plan or pay a penalty. Twenty-eight states and numerous private groups have filed suit against the provision, alleging it is unconstitutional. (Other parts of the Act have also been challenged; we focus only on the so-called "individual mandate.") At oral argument in one of these cases last December, Judge Roger Vinson asked the Justice Department attorney tasked with defending the law whether he could uphold the mandate without granting the federal government constitutional authority to purchase any good or service, including broccoli.

It is axiomatic that the Constitution places limits on the scope of federal power. In *Marbury v. Madison*, Chief Justice John Marshall explained that the federal government has "defined and limited" powers, "and that those limits may not be mistaken, or forgotten, the Constitution is written." The question before the courts today is whether a requirement that individuals purchase health insurance is consistent with this scheme.

pre-existing conditions. But does it allow Congress to force individuals to buy health insurance as well?

The federal government maintains that the decision whether or not to purchase health insurance is an economic activity subject to federal regulation. In the words of Harvard law professor Laurence Tribe, the decision whether to purchase health insurance is an economic "choice" subject to regulation like other economic activities. Even if some people do not want to purchase insurance today, they will inevitably need health care, and, if they are uninsured, they will impose burdens on the rest of society. Opponents of the mandate counter that the Supreme Court has only upheld the regulation of economic "activities" under the Commerce Clause, and refusing to buy health insurance is not an "activity" at all. A power to regulate "inactivity" would seem to enable Congress to regulate anything or anyone.

The Commerce Clause

Like most federal regulations, the individual mandate was adopted pursuant to the federal government's power to regulate "commerce ... among the states." As interpreted by the Supreme Court, this includes the power to regulate the channels of interstate commerce, goods and services sold in interstate commerce, as well as those activities that have a "substantial effect" on interstate commerce. As applied in recent cases, this authorizes Congress to regulate just about any economic activity, particularly when doing so is a necessary part of a broader regulatory scheme.

Under the Court's Commerce Clause jurisprudence, there is no doubt Congress may regulate the insurance industry. Indeed, the Supreme Court so held in 1944. Congress may require insurance companies to issue insurance plans to all comers and prohibit them from discriminating against those with

Necessary and Proper?

Even if the mandate is not, itself, the regulation of economic activity, it might be justified as a necessary part of a broader regulatory scheme. The Constitution expressly authorizes Congress "to make all laws which shall be necessary and proper for carrying into execution" the federal government's enumerated powers, and the mandate facilitates other health insurance reforms in the Act. The Affordable Care Act



– Jonathan H. Adler
Professor of Law,
Director of the Center for
Business Law & Regulation



– Erik M. Jensen
David L. Brennan
Professor of Law

requires insurers to issue insurance to all comers, and prohibits refusals for pre-existing conditions. This creates an incentive for younger, healthier individuals to wait until they get sick to purchase health insurance, making insurance more expensive for everyone else. The mandate tries to prevent such opportunistic behavior by requiring people to obtain coverage up front.

In *Gonzales v. Raich*, the Supreme Court upheld a prohibition on the possession of medical marijuana as part of the federal government's broader regulation of drugs under the Controlled Substances Act. Barring simple possession was necessary for the federal government to maintain its prohibition on the sale of marijuana. A similar rationale could justify the mandate.

While this argument is appealing, it knows few limits. Under this theory, Congress could mandate the purchase of any product or service, even broccoli, so long as it does so as part of a broader regulatory scheme. The federal government argues that health markets are different from ordinary markets and that health insurance is not just another product or service, but a financial instrument that helps address economic risks. Moreover, Congress deemed it necessary to mandate the purchase of health insurance, as part of broader reforms. Without a mandate, it will be difficult to control health care costs. Yet some supporters of the mandate, including former Solicitor General Charles Fried, concede that the same arguments used to justify the individual mandate could apply to broccoli or just about anything else.

States routinely require drivers to purchase car insurance, and Massachusetts has imposed a statewide health insurance mandate for years. How is the individual mandate different? The federal government, unlike states, has only those powers enumerated in the Constitution. Second, states do not impose a universal car insurance mandate. Rather, insurance is a prerequisite for the privilege of driving a car on public roads. If you don't want to drive on public roads, you don't need to obtain insurance. The health insurance mandate, on the other hand, applies to almost everyone.

The federal government has never sought to mandate the purchase of any other good or service under the Commerce Clause before now, but it is not clear which way this argument cuts. Mandate supporters suggest this means there is nothing to fear, and that a health insurance mandate is unlikely to lead to further requirements of this sort. Opponents argue this shows the mandate is an unprecedented assertion of federal power, and that striking it down will not unduly constrain federal power as no other laws will fall with it.

The Taxing Clause

Although supporters of the individual mandate, including the president, denied that a penalty for not acquiring insurance would be a tax—no new taxes!—the administration is now advancing the Taxing Clause (granting Congress the "Power to lay and collect Taxes, Duties, Imposts and Excises") as an alternative constitutional justification. That is questionable on several grounds.

Earlier versions of the legislation did refer to the charge as an "excise" or a 2.5 percent "tax" on "modified adjusted gross income." But in the Affordable Care Act Congress used the term "penalty," and all legislative findings had to do with the commerce power, none with the taxing power. Yes, the penalty was added to the Internal Revenue Code, payment will be made with income tax returns, and the IRS will handle enforcement. But the Code contains many provisions, enforced by the IRS, for interest and penalties that are not taxes. Maybe courts should ordinarily defer to Congress's exercise of its taxing power, but here there seems to be nothing to defer to.

Besides, the Taxing Clause adds little or nothing to the substantive arguments for constitutionality. It is hard to see the Clause as helping to justify the generally applicable requirement that each individual secure health insurance. If the individual mandate works perfectly, no penalties will be paid and government revenues will not increase. Where's the tax? The administration has argued that the measure will be "revenue-raising [and] the associated regulatory provisions bear a reasonable

The federal government maintains that the decision whether or not to purchase health insurance is an economic activity subject to federal regulation.



relation to the statute's taxing purpose." But that description gets things backwards. The penalty will support a regulatory structure; the statute has no independent "taxing purpose."

At best, the Taxing Clause might validate the penalty provision of the mandate. But this line of argument creates other difficulties. The Taxing Clause is not, as many seem to think, a simple alternative to the Commerce Clause. If the penalty will really be a tax, then it will be subject to constitutional limitations on the taxing power, regardless of whether it might otherwise be a valid regulation of commerce. We would have to consider, for example, whether it might be a direct tax, subject to an onerous apportionment rule (which the penalty would not satisfy), or whether it might be treated as a "tax on incomes," exempted from apportionment by the Sixteenth Amendment. Maybe those complicated questions can be dealt with, but why go there at all?

It should go without saying—but won't—that not all governmental charges are taxes. Congress called the penalty a penalty, and that should get us back to analyzing Commerce Clause issues, which is where the debate should always have been centered. For what it's worth, to this point, judges evaluating the individual mandate have concluded either that the Commerce Clause is by itself sufficient authority or that neither Clause does the job. None has seen the Taxing Clause as helpful to the analysis.

Severability

Another issue looming in the background is whether the individual mandate is severable from the remainder of the law. As a general rule,

federal courts seek to invalidate as little of a statute as possible. As the Supreme Court explained last term in striking down a small portion of the Sarbanes-Oxley Act, the "normal rule" is "partial, rather than facial, invalidation" of a federal statute. Yet the White House has proclaimed that the individual mandate is "inseparably linked" to the provisions barring insurance companies from considering pre-existing conditions, and the Affordable Care Act does not contain a severability clause instructing courts to leave the remainder of the law in place should one provision fail to pass constitutional muster. For this reason, Judge Vinson struck down the entirety of the Affordable Care Act after concluding the individual mandate was unconstitutional.

As of this writing, the two appellate courts to have considered the individual mandate have reached opposite conclusions. Additional challenges are working their way through the federal courts. The litigation is challenging because the individual mandate is an unprecedented exercise of federal authority, forcing courts to address fundamental questions about the scope of federal power. At heart, the litigation over the individual mandate is a fight between competing constitutional visions, and how the Supreme Court will ultimately resolve it is anyone's guess. ■

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Do forensic scientists have confirmation bias?

Professor Paul Giannelli examines how external influences can affect the identification process and forensic scientists



— Paul C. Giannelli
Albert J. Weatherhead III and
Richard W. Weatherhead Professor,
Distinguished University Professor

Commentators have identified both motivational and cognitive bias as a concern in the forensic setting. (See Elizabeth F. Loftus & Simon A. Cole, *Contaminated Evidence*, 304 *SCIENCE* 959) (May 14, 2004) (“[F]orensic scientists remain stubbornly unwilling to confront and control the problem of bias, insisting that it can be overcome through sheer force of will and good intentions.”) As one commentator noted: “To the extent that we are aware of our vulnerability to bias, we may be able to control it. In fact, a feature of good scientific practice is the institution of processes — such as blind testing, the use of precise measurements, standardized procedures, statistical analysis — that control for bias.” (MIKE REDMAYNE, *EXPERT EVIDENCE AND CRIMINAL JUSTICE* 16 (2001).) As a National Academies DNA Report notes, “[I]aboratory procedures should be designed with safeguards



to detect bias and to identify cases of true ambiguity. Potential ambiguities should be documented ..." (NATIONAL RESEARCH COUNCIL, THE EVALUATION OF FORENSIC DNA EVIDENCE 85 (1996).)

There are two different types of bias: motivational and cognitive. Cognitive bias occurs because people tend to see what they *expect* to see, and this typically affects their decision in cases of ambiguity. Motivational bias arises when lab personnel's often close association with the police subconsciously influences their conclusions.

MOTIVATIONAL BIAS

Commentators have argued for the establishment of crime laboratories that are independent of the police in order to minimize police pressure that may bias lab results. A prominent forensic scientist has commented that it "is important to recognize that the police agency controls the formal and informal system of rewards and sanctions for the laboratory examiners. Many of these laboratories make their services available only to law enforcement agencies. All of these factors raise a legitimate issue regarding the objectivity of laboratory personnel." (*Symposium on Science and the Rules of Legal Procedure*, 101 F.R.D. 599, 642) (1983) (Statement of Professor Joseph Peterson). As one former lab director noted, "Many forensic scientists at the state police labs ... saw their role as members of the state's attorney's team. They thought they were prosecution witnesses." (Steve Mills et al., *When Labs Falter, Defendants Pay: Bias Toward Prosecution Cited in Illinois Cases*, CHI. TRIB., Oct. 20, 2004.)

The problem is not unique to this country. According to a British court: "Forensic scientists may become partisan. The very fact that the police seek their assistance may create a relationship between the police and the forensic scientists. And the adversarial character of the proceedings tends to promote this process. Forensic scientists employed by the government may come to see their function as helping the police. They may lose their objectivity." (*Regina v. Ward*, [1993] 1 WLR 619, 674.)

In 2002, the Illinois Governor's Commission on Capital Punishment proposed creation of an independent state laboratory as a way to provide access to forensic services. (See REPORT OF THE GOVERNOR'S COMM'N ON CAPITAL PUNISHMENT (2002) (Recommendation 20: "[I]ndependent state forensic laboratory should be created, operated by civilian personnel, with its own budget, separate from any police agency or supervision.")

AS A NATIONAL ACADEMIES DNA REPORT NOTES, "[L]ABORATORY PROCEDURES SHOULD BE DESIGNED WITH SAFEGUARDS TO DETECT BIAS AND TO IDENTIFY CASES OF TRUE AMBIGUITY. POTENTIAL AMBIGUITIES SHOULD BE DOCUMENTED

(See also Paul C. Giannelli, *The Abuse of Scientific Evidence in Criminal Cases: The Need for Independent Crime Laboratories*, 4 VA. J. SOC. POL'Y & L. 439, 457-62 (1997).)

COGNITIVE BIAS

Trial attorneys are very familiar with motivational bias. It is a common method of impeachment. (See PAUL C. GIANNELLI, UNDERSTANDING EVIDENCE 22.04 (2d ed. 2006).) Cognitive bias is different and probably many lawyers are not familiar with it, at least not formally.

Cognitive bias occurs because people tend to see what they *expect* to see, and this typically affects their decision in cases of ambiguity.

These include "observer effects." A simple example illustrates the point. When trials for a new drug are conducted, they are conducted double blind. Neither the patient nor the physician knows whether the patient is receiving the new drug or a placebo (the control). Numerous studies have demonstrated that physicians who know that their patients are receiving a new drug tend to see positive results, even when there are none. In short, knowing (cognitive) something, affects our perceptions. It is simply human nature. This also explains why law professors grade examinations anonymously.

A slightly different type of cognitive bias is called "confirmation bias." The psychological literature on lineups provides an illustration. Eyewitnesses with reservations about their identifications often become positive after learning that the person they identified is the prime suspect, in the police's view. (See REPORT OF THE ABA CRIMINAL JUSTICE SECTION'S AD HOC INNOCENCE COMMITTEE TO ENSURE THE INTEGRITY OF THE CRIMINAL PROCESS, ACHIEVING JUSTICE: FREEING THE INNOCENT, CONVICTING

THE GUILTY (Paul C. Giannelli & Myrna Raeder eds., 2006) (recommending double blind lineups).

The same phenomenon may occur when external information is provided to lab analysts. For example, Professor Peter DeForest has described investigators who responded to inconclusive results by saying to forensic examiners: "Would it help if I told you we know he's the guy who did it?" (D. Michael Risinger et al., *The Daubert/Kumho Implications of Observer Effects in Forensic Science: Hidden Problems of Expectation and Suggestion*, 90 CAL. L. REV. 1, 39 (2002).) One crime lab examiner, "who has worked in the crime lab system since 1998, said she tried not to be swayed by detectives' belief that they had a strong suspect. 'We're all human,' she said. 'I tried not to let it influence me. But I can't say it never does.'" (Ruth Teichroeb, *Rare Look Inside State Crime Labs Reveals Recurring DNA Test Problems*, SEATTLE POST-INTELLIGENCER, July 22, 2004.)

THE MAYFIELD AFFAIR

Confirmation bias also arose in the misidentification of fingerprints in the Madrid train bombing investigation, which involved the terrorist train bombing in Madrid on March 11, 2004. The FBI got it wrong, misidentifying Brandon Mayfield, a Portland lawyer, as the source of the crime scene prints (See Sara Kershaw, *Spain and U.S. at Odds on Mistaken Terror Arrest*, N.Y. TIMES, June 5, 2004, at A1) (Spanish authorities cleared Brandon Mayfield and matched the fingerprints to an Algerian national).

To its credit, the FBI initiated an investigation using outside experts. The resulting report raised a number of disquieting issues. (Robert B. Stacey, *A Report on the Erroneous Fingerprint Individualization in the Madrid Train Bombing Case*, 54 J. FORENSIC IDENTIFICATION 707 (2004).) One mistake was attributed in part to "confirmation bias."

In other words, once the examiner made up his mind, he saw what he expected to see during reexaminations. A second review by another examiner was not conducted blind — i.e., the reviewer knew that a positive identification had already been made — and thus was also subject to the influence of confirmation bias. Fourth, the culture at the laboratory was poorly suited to detecting mistakes. As the report noted, "To disagree was not an expected response."

THE EXPERIMENT

As a result of the Mayfield case, several British researchers devised an experiment to test whether external influences can affect the identification process. (Itiel E. Dror et al., *Contextual Information Renders Experts Vulnerable to Making Erroneous Identifications*, 156

FORENSIC SCI. INT'L 74 (2006).) In particular, they were concerned with confirmation bias as occurred in the Mayfield misidentification. Fingerprint examiners who were unfamiliar with the Mayfield prints were asked by colleagues to compare a crime scene and suspect print. "They were told that the pair of prints was the one that was erroneously matched by the FBI as the Madrid bomber, thus creating an extraneous context that the prints were a non-match." The participants were then instructed to ignore this information. The prints, in fact, were from cases that each of the participants had previously matched. Of the five examiners, only one still judged the print to be a match. The other four changed their opinions; three directly contradicted their prior identifications, and the fourth concluded that there was insufficient data to reach a definite conclusion. "This is striking given that all five experts had seen the identical fingerprints previously and all have decided that the prints were a sound and definite match."

CONCLUSION

Information from an investigation should not be given to the analyst interpreting the results — i.e., the examiner should generally be "blind" to the case's circumstances and other evidence. ABA Standards for Criminal Justice, DNA Evidence, Standard 3.1 provides, in part, that testing laboratories should "follow procedures designed to minimize bias when interpreting test results." ■

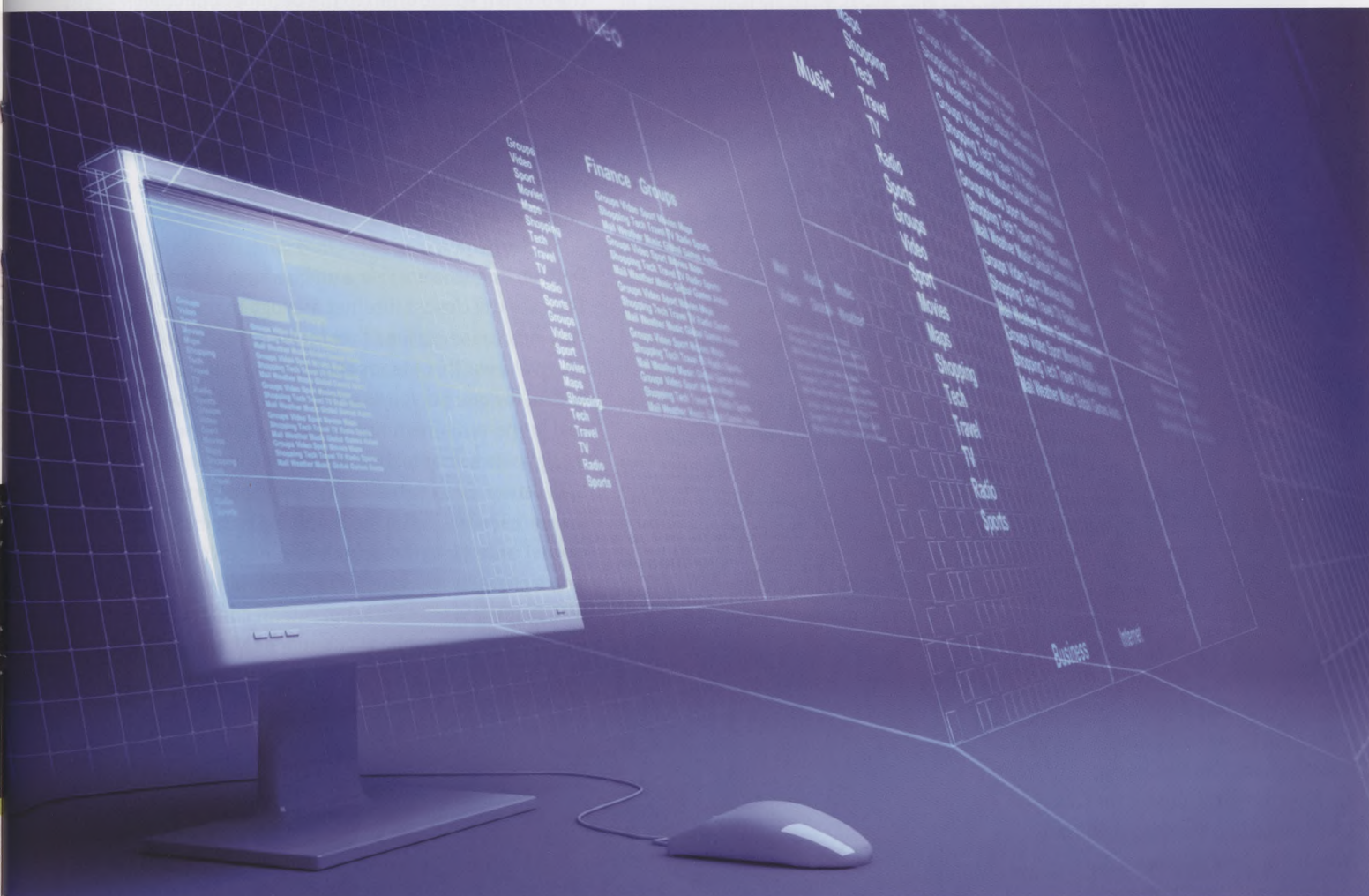
This article is from Professor Giannelli's column in the Criminal Justice section newsletter for the American Bar Association.

We are extremely pleased to report that President Snyder and Provost Baeslack announced that Paul C. Giannelli, the Albert J. Weatherhead III & Richard W. Weatherhead Professor of Law for more than 20 years, has a new title of distinction to add to his name — Distinguished University Professor. This designation represents the highest honor the university bestows on a member of its professoriate, and is granted to no more than 3 percent of the university's tenured faculty.

GLOBAL REAL PROPERTY:

Internet Domain Names,
Trademarks and Free Speech

Professor Jacqueline Lipton's book, *INTERNET DOMAIN NAMES, TRADEMARKS AND FREE SPEECH*, poses the question—How should domain name policy be developed to balance trademark interests against other concerns such as free speech and other intellectual property rights?



Below is an edited version of the introduction from the book, published by Edward Elgar Publishing.

From day one, the Internet domain name system has created puzzles for law and policy makers. These challenges have included questions about whose responsibility it is to develop and enforce domain name policy, and on what basis policy decisions are to be made. The Internet Corporation for Assigned Names and Numbers (ICANN) is formally tasked with the administration of the domain name system. However, there has been some confusion over the years about the appropriate balance between ICANN's technical and policy functions. It was originally assumed that ICANN was a purely technical body, and not a policy-making organization. However, ICANN was fairly quickly forced to make policy in some areas related to its core technical functions. An obvious example of ICANN's policy-making role is its implementation of an online dispute resolution procedure for Internet domain names — the Uniform Domain Name Dispute Resolution Policy (UDRP). Some policy-making has also been incorporated into ICANN's proposal for new generic Top Level Domains (gTLDs).

Domestic legislatures and courts have also been involved in making domain name policy. Some domestic legislatures have been more active than others in this area: for example, at both the federal and state levels, American legislatures have enacted laws that regulate certain conduct involving domain names. The variations in approach between different legislatures naturally raise potential disharmonization concerns. Nevertheless, the different approaches create a variety of testing grounds that ultimately might assist in formulating the best approach to resolving domain name conflicts. When set against the backdrop of the more international UDRP, local experiments may prove useful in developing new approaches to specific disputes. At the same time, the UDRP might retain a baseline mechanism for expeditiously resolving some of the more pressing conflicts.



— Jacqueline D. Lipton
Professor; Associate Dean for Faculty
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Co-Director of the Center for Law
Technology and the Arts; Associate
Director of the Frederick K. Cox
International Law Center

Some have argued that domain name regulation is no longer important because Internet users rely on search engines, rather than domain names, for navigating content on the World Wide Web. So why write a book on domain name regulation? In fact, there is little evidence that disputes over Internet domain names are becoming less prevalent in practice. Recent statistics indicate that domain name disputes are actually on the rise. The implementation of new gTLDs will also raise the specter of new classes of domain space disputes. The new system allows for people and organizations to apply for new gTLDs, such as ".hotel", ".camera", or ".fun". ICANN is anticipating disputes over such registrations on legal, moral, community, and string confusion grounds.

In the early days of the domain name system, the policy focus was very much on the protection of trademarks in the domain space, often to the detriment of other interests, such as free speech, personal reputation, or privacy. The introduction of new gTLDs creates an opportunity to review, evaluate, and make suggestions for future directions in domain name policy. This book contributes to the debate by identifying gaps in the current regulations and directions in which future policies might be developed.

Domain names comprise a unique form of online asset. They are the closest Internet analogy to real property. This is because, unlike other forms of digital property, they are rivalrous. This means that one domain name can only be held by one person or entity at a time. However, unlike real property, domain names exist across domestic boundaries so domestic property law has limited application. Even nationally focused intellectual property laws are limited in the face of global online assets. The closest analogy to domain names in intellectual property law is probably found in trademark law. However, even trademark law effectively deals with non-rivalrous assets within fixed geographical boundaries. If two people

develop the same trademark for different geographic or product markets, they can simultaneously hold trademark rights. Unlike trademarks, any given domain name can only be held by one person. Of course, similar domain names can be simultaneously registered by different people: for example, one person could register "alice.com" while another registers "alicia.com", "alice.net", or "alice.co.uk". However, only one person can hold any one of those names at any given time.

Unlike real property, the most popular domain names — in the gTLDs like ".com" and ".net" — are effectively global in scope. They are not tied to any particular geographic region. Other online assets, including copyrights and trademarks, are likewise not global in the same sense as domain names. Copyrights and trademarks derive from domestic legal systems as government-granted rights. These rights may be supported by international treaties. However, they are domestic grants of rights rather than truly global assets. Of course, domestic laws might impact on individual rights in particular domain names. Nevertheless, domain names exist outside domestic legal systems, while copyrights and trademarks are creatures of domestic law. Thus, domain names are arguably the first truly global Internet analog to real property. They are an example of something that is like real property, but that exists in the borderless realm of cyberspace.

This raises interesting questions about domain names. In particular, issues arise about the need to balance competing interests in domain names, such as property and speech interests. While domain names are often traded as marketable commodities, they also have speech characteristics in that they are made of up strings of alphanumeric characters intended to mean something to Internet users. Domain name regulations need to accommodate, to the maximum extent possible, legal and cultural differences in different jurisdictions on questions relating to property and speech, as well as some other

competing interests such as privacy. Regulations must also be enforced which is problematic in the case of a truly global asset. Avenues for complaint about domain name registrations and uses need to be readily accessible to complainants, yet another tall order.

To date, the process of developing and enforcing balanced domain name policies seems to have stalled, except for some recent developments by ICANN in the area of the proposed new gTLDs. These developments largely reflect policy positions previously taken by ICANN with respect to existing gTLDs. These initial policy determinations were aimed largely at protecting trademark holders from the activities of cybersquatters. Cybersquatters registered domain names corresponding with trademarks and sought to profit from selling them to the corresponding trademark holder, or one of its competitors. ICANN adopted the UDRP in 1999 to deal with this issue. Much of the early drafting of the UDRP was conducted by the World Intellectual Property Organization (WIPO). Perhaps understandably, WIPO tended to focus on protecting the interests of one of its main constituencies: trademark holders.

Since the adoption of the trademark-focused UDRP, very little has been done in the way of global policy development to protect other interests in domain names. Such interests might include free speech, privacy, personality rights, and rights in geographic and cultural indicators. WIPO has maintained that some of these interests require further examination in the domain space, but no specific action has been taken outside the new gTLD application process. Even competing commercial interests are not currently addressed particularly effectively under the UDRP. There are no specific rules for determining who has the best right to a given domain name between, say, two competing legitimate trademark holders. A presumption of "first come, first served" currently prevails.



DOMAIN NAMES COMPRISE A UNIQUE FORM OF ONLINE ASSET. THEY ARE THE CLOSEST INTERNET ANALOGY TO REAL PROPERTY. THIS IS BECAUSE, UNLIKE OTHER FORMS OF DIGITAL PROPERTY, THEY ARE RIVALROUS.



This book identifies and categorizes different interests that may exist in domain names, as well as considering potential approaches to resolving disputes between competing interest holders. Some of these approaches could be implemented by ICANN, while others would require action by other bodies, such as domestic courts and legislatures. Emerging social norms and technological capabilities of the respective domain name registration systems might also play a role. ICANN may need to formally adopt a broader policy-making role in the future. It may need to expressly protect a greater array of interests in domain names outside of the trademark arena. Perhaps the recent moves to protect trademarks alongside interests of public morality and established communities in the new gTLD registration procedure is a step in the right direction. However, a brief survey of ICANN's proposed dispute resolution procedures in the new gTLD system evidences that greater thought has been given to the protection of trademarks than other interests to date. This step forward is also not reflected back with respect to disputes arising under existing gTLDs.

Importantly, we need to recognize that not all disputes involving domain names implicate trademarks. Increasingly, domain name speculators are turning to the registration of names of private individuals, acronyms, and generic terms. While some of these strings may coincide with trademarks, many will not. However, they may coincide with legitimate

interests in personal identities, privacy, cultural interests and the like.*

This book does not, and is not intended to, provide comprehensive answers to all domain name regulation questions. It aims to identify, and to make suggestions for the resolution of, some of the current policy problems that exist for domain name governance. It is the author's hope that readers will take these suggestions for what they are worth. None of them is perfect, but the current system is also far from perfect, notwithstanding its relatively effective protections for trademark holders against cybersquatting. In modern domain name practice, this is a relatively rare case because the original cybersquatting phenomenon was largely a function of unfamiliarity by trademark holders with the commercial potential of the Internet in its early days. Today's domain name disputes tend to involve more difficult issues such as competing interests in generic names, personal names, and cultural identifiers, as well as competitions between multiple legitimate trademark holders. Hopefully, this book will serve to spark some additional debate about appropriate next steps in domain name governance at the domestic, and more importantly at the global, level. ■

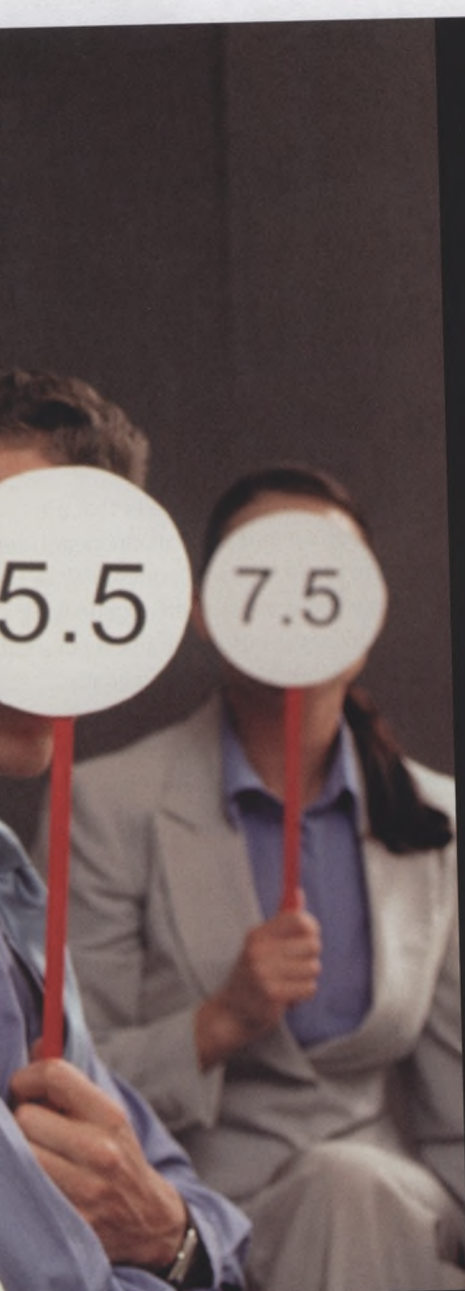
** Portions of this text and all footnotes have been omitted.*

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Employment Discrimination Law and the Concept of Immutability

Professor Sharona Hoffman explores the impact of new legal developments in the field of employment discrimination law



– Sharona Hoffman
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Co-Director of the Law-Medicine
Center

The field of employment discrimination has undergone significant transformation during the past few years. The employment discrimination laws have traditionally prohibited discrimination based on race, color, national origin, religion, sex, age, disability, and citizenship status. The scope of protection, however, was broadened by two important laws that were passed in 2008. The Genetic Information Nondiscrimination Act (GINA), enacted on May 21, 2008, prohibits employers from discriminating against applicants and employees based on genetic information. The Americans with Disabilities Act Amendments Act (ADAAA), signed into law on September 25, 2008, significantly expanded the ADA's definition of "disability" in order to extend coverage to many more workers with health problems. The ADA now prohibits employers from discriminating against any individual based on almost any physical or mental impairment. It also continues to require employers to provide reasonable accommodations, though only a subset of people with disabilities, those who are substantially limited in a major life activity, are entitled to the accommodation benefit.

In an article entitled "The Importance of Immutability in Employment Discrimination Law," published in the *William and Mary Law Review* in April of 2011, I explore the impact of these new legal developments on the field of employment discrimination law. A major focus of the article is an effort to explain why certain traits are protected by the anti-discrimination statutes while others are not.

Some commentators have postulated that the laws aim to protect discrete and insular minorities with a history of discrimination. While this theory applies to some groups, such as racial or religious minorities, it does not explain many of the covered categories. For example, white males can file reverse discrimination claims under Title VII of the Civil Rights Act of 1964. Likewise, GINA protects all Americans because every human being has a genetic makeup, and thus, its applicability is not limited to discreet and insular minorities.

An alternative theory is that the employment discrimination laws establish a formal equality model for the workplace. Arguably, their only aim is to protect individuals who are well-qualified for jobs but may be excluded by employers because of prejudice. Thus, the statutes may be understood as attempting to align jobs with worker qualifications and to eliminate biased consideration of attributes, such as race, that are irrelevant to job performance. The formal equality

model, however, is confounded by the reasonable accommodation mandate. The laws require that employers accommodate employees with special needs associated with religious practice or disability even if those needs would impede job performance absent the accommodation. Thus, in the two cases of religion and disability, the employment discrimination statutes go beyond a mere requirement that employers eschew discrimination. The laws impose affirmative obligations on employers to take steps that remove job performance barriers even if these are costly or burdensome.

A more convincing argument is that the employment discrimination laws protect attributes that are "immutable." The addition of the ADAAA and GINA to the corpus of employment discrimination law justifies a renewed focus on the concept of immutability, because both address attributes that are biological and fixed.

While the concept of immutable characteristics offers a unifying theme that explains all of the included traits, it does not explain why other characteristics that are equally unalterable or fundamental to identity are excluded.

For purposes of my argument, I use a broad definition of the term "immutable" that has been adopted by some courts. An immutable characteristic is traditionally one that is an accident of birth or otherwise unchangeable. In the employment discrimination context, however, it can also be a trait that is so fundamental to the identity of an individual that it is effectively unalterable because changing it would require significant physical or mental trauma. Thus, the employment discrimination statutes cover religion, even though it can be altered through conversion. The law recognizes that in the United States, forced conversion for reasons of

employment is unthinkable.

If we accept the liberal definition of the term "immutable characteristic," then immutability constitutes a fitting explanation for all the traits covered by the employment discrimination laws. Race, color, national origin, religion, sex (including pregnancy), age, disability, citizenship status (prior to citizenship eligibility), and genetic makeup are all immutable in some sense of the term.

It is, in fact, reasonable for the law to protect immutable traits. It is unfair to punish individuals because of attributes that are outside of their control. In addition, from a public policy perspective, it would be intolerable for employers to be able to influence workers' decisions about critical aspects of their lives, such as religion and pregnancy. Thus, adverse employment decisions based on these attributes are prohibited.

I now wish to shift the focus from the traits that are included within the employment discrimination statutes' realm of protection to those that are excluded. While the concept of immutable characteristics offers a unifying theme that explains all of the included traits, it does not explain why other characteristics that are equally unalterable or fundamental to identity are excluded. Examples are sexual orientation, marital status, parental status, political affiliation, and appearance, particularly with respect to obesity.

American workers often report that they suffer discrimination because of these characteristics. Yet, employers are free to refuse to hire or fire individuals because they are gay, have young children, are obese or for any other reason that is not explicitly prohibited by law. These categories are protected by the laws of several states but not by federal law.

Consequently, I conclude that the federal statutory scheme is somewhat incoherent. The courts have found that the law shields even fringe religions, such as White Supremacy, but not sexual orientation or parental status. Admittedly, many legislative choices are made for reasons of politics and as a result of lobbying and interest group pressures. However, Congress has recently shown a willingness to revisit the employment discrimination arena and meaningfully expand its scope through GINA and the ADAAA. For the sake of consistency and fairness, Congress should be willing to reexamine the covered categories further. The American legal system should more generally prohibit discrimination based on immutable characteristics rather than selectively choosing among them. Thus, workers could be offered greater protection and Congress could establish a more comprehensive anti-discrimination mandate. ■

Getting What You Pay For

PROFESSOR JONATHAN ENTIN DISCUSSES JUDICIAL COMPENSATION AND JUDICIAL INDEPENDENCE

One vital way of assuring judicial independence is to guarantee that judges need not fear that their salaries will be reduced if they render unpopular or controversial decisions. The United States Constitution seeks to do this by providing that all federal judges "shall, at stated Times, receive for their Services, a Compensation, *which shall not be diminished during their Continuance in Office.*" As the Supreme Court explained in perhaps the leading case on the Compensation Clause, "[a] Judiciary free from control by the Executive and the Legislature is essential if there is a right to have claims decided by judges who are free from potential domination by other branches of government."

The Compensation Clause does not forbid increases in judicial pay; it prohibits only reductions in judges' salaries. This aspect of the clause undoubtedly reflects the notion that the prospect of a pay cut poses a greater threat to judicial independence than does a pay raise.

The apparent simplicity of the language of the federal Compensation Clause and its state counterparts conceals several troublesome issues: When does a judicial salary become vested? Does taxation of judicial salaries unconstitutionally diminish judicial compensation? Does withholding of cost-of-living increases impermissibly reduce judges' pay? Apart from constitutional concerns, how much should judges be paid and how often should their salaries be increased?

VESTING OF JUDICIAL SALARIES

The Supreme Court has established that judicial salaries vest for purposes of the Compensation Clause when they take effect. Proposed pay raises may be rescinded before their effective date, but once they have gone into effect any such raises may not be revoked. This is the lesson of

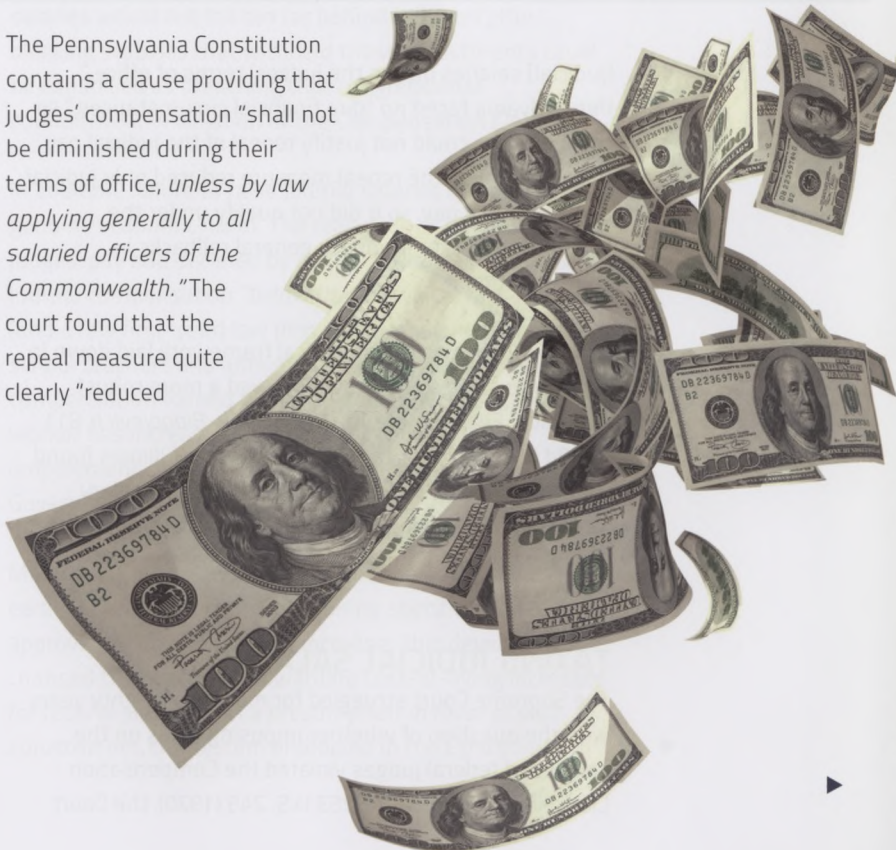
United States v. Will, 449 U.S. 200 (1980). Congress may not lower judges' salaries, but it has broad discretion to grant or withhold judicial pay raises before the beginning of the fiscal year.

Similar issues have arisen at the state level, where courts also have enforced judicial salary protections analogous to those in the federal Compensation Clause. A recent example comes from Pennsylvania. In *Commonwealth v. Stilp*, 905 A.2d 918 (Pa. 2006), the state supreme court rebuffed an effort to roll back a pay raise four months after it had gone into effect.

The Pennsylvania Constitution contains a clause providing that judges' compensation "shall not be diminished during their terms of office, *unless by law applying generally to all salaried officers of the Commonwealth.*" The court found that the repeal measure quite clearly "reduced



— Jonathan L. Entin
Professor of Law and
Political Science





[judicial] salaries during the judges' terms of office." Pennsylvania faced no "dire financial circumstances," so the exception could not justify repeal of the judicial pay raise. Moreover, the repeal measure reduced only judicial and legislative pay, so it did not qualify under the constitutional exemption for general rollbacks in compensation.

While *Stilp* follows the analytical framework laid down in *Will*, some state courts have followed a more robust approach. For example, in *Jorgensen v. Blagojevich*, 811 N.E.2d 652 (Ill. 2004), the Supreme Court of Illinois found that the governor's efforts to prevent judicial salary increases from taking effect before the start of the fiscal year violated the Compensation Clause of the state constitution.

TAXING JUDICIAL SALARIES

The Supreme Court struggled for more than eighty years with the question of whether imposing taxes on the salaries of federal judges violated the Compensation Clause. In *Evans v. Gore*, 253 U.S. 245 (1920), the Court

held that Congress could not constitutionally extend the federal income tax to sitting judges. By requiring the plaintiff judge to remit the tax after receiving his pay, the government was reducing his salary: "Was he not placed in practically the same situation as if [the money] had been withheld in the first instance? Only by subordinating substance to mere form could it be held that his compensation was not diminished."

In *Miles v. Graham*, 268 U.S. 501 (1925), the Court ruled that the income tax could not constitutionally be applied to a judge who was appointed after the tax's enactment. The timing of the judge's appointment made no difference: Congress must fix judicial salaries, after which "the amount specified becomes the compensation which is protected against diminution during [the judges'] continuance in office." Because the tax diminished the judge's pay, it was invalid.

Miles v. Graham was overruled by *O'Malley v. Woodrough*, 307 U.S. 277 (1939), which taxed the salary of a federal judge who took office after the tax statute was enacted.

Justice Frankfurter could scarcely conceal his incredulity at the view that subjecting newly appointed judges to a nondiscriminatory, pre-existing income tax might compromise judicial independence. The tax merely "charge[s] them with the common duties of citizenship, by making them bear their aliquot share of the cost of maintaining the Government."

The end for *Evans v. Gore* came in *United States v. Hatter*, 532 U.S. 557 (2001), which challenged the extension of Medicare and Social Security taxes to sitting federal judges. Before 1983, Article III judges (and most other federal employees) were exempt from both taxes. The *Hatter* Court overruled *Evans v. Gore* because the Constitution does not forbid "a nondiscriminatory tax that treat[s] judges the same way it treat[s] other citizens."

The *Hatter* Court upheld the extension of Medicare taxes to Article III judges as part of a statute that also brought most other previously exempt federal workers into that program. Less persuasively, the Court found that the Social Security tax extension violated the Compensation Clause because it somehow discriminated against federal judges.

As a practical matter, *Hatter* makes it unlikely that taxation issues will intersect with the Compensation Clause again. Lurking in these cases, however, is another rationale for the Compensation Clause: maintaining judicial salaries at a level that will attract excellent lawyers to the bench.

WITHHOLDING COST-OF-LIVING INCREASES

The Compensation Clause implications of inflation were foreshadowed in *Hatter*. After concluding that the extension of Social Security taxes to sitting federal judges constituted an impermissible diminution in judicial pay, the Court rejected the government's argument that subsequent pay raises, which exceeded the cost of the new taxes, served to remedy the violation. Justice Breyer explained that "the judicial salary increases [cited by the government] simply reflected a congressional effort to restore... to judges... some, but not all, of the real compensation that inflation had eroded."

At the time of the *Hatter* decision, *Williams v. United States*, 240 F.3d 1019 Fed. Cir. (2001), a case addressing the erosion in the real value of judicial salaries, was making its way through the system. *Williams* rejected a

Compensation Clause challenge to congressional action setting aside several cost-of-living increases in judicial salaries. The case arose under the Ethics Reform Act of 1989, which established a new system for determining judges' pay. That statute raised judicial compensation by 25% to make up for the effects of inflation. In addition, it provided for cost-of-living increases for federal judges in any year that civil service employees received such salary adjustments. Although judges received cost-of-living adjustments for several years, Congress passed legislation blocking raises in 1995, 1996, 1997, and 1999.

Several federal district judges claimed that withholding cost-of-living adjustments unconstitutionally diminished their compensation. The United States Court of Appeals for the Federal Circuit held that *Will* doomed the judges' claims: the blocking statutes were enacted before the start of each relevant year, so the cost-of-living increases for those years never took effect.

The Supreme Court denied certiorari, over the dissent of three justices. With the support of Justices Scalia and Kennedy, Justice Breyer (who wrote for the Court in *Hatter*), wrote a twelve-page opinion suggesting that the Ethics Reform Act could be seen as embodying a congressional commitment "to protect federal judges against undue diminishment in real pay by providing cost-of-living adjustments to guarantee that their salaries would not fall too far behind inflation"; the blocking statutes that withheld those adjustments could be construed as breaching that congressional commitment in violation of the Compensation Clause.

In addition, failure to raise judicial salaries had caused genuine economic harm. The real value of federal district judges' pay had declined by nearly 25% since 1969, leaving judicial compensation "below that of typical mid-level (and a few first-year) law firm associates and many law school teachers and administrators, [while] the real compensation earned by the average private sector worker has increased, as has that in nearly all employment categories outside high levels of Government."

Meanwhile, in late 2001 Congress made permanent an earlier appropriations rider requiring specific legislative approval for any judicial pay increase. This development changed the process for awarding cost-of-living increases for federal judges from a presumption *in favor of* such adjustments, the system embodied in the Ethics Reform

Act, to a presumption *against* them. Moreover, the change affected only federal judges. Under the reasoning of *Hatter*, which focused on whether Congress had “impose[d] a special legislative burden upon [judges’] salaries alone,” singling out the judiciary for less favorable treatment in connection with cost-of-living adjustments might well violate the Compensation Clause.

It is possible that we will soon get an authoritative response from the Supreme Court. After Congress failed to increase judicial salaries for 2007, another group of judges (including Judge Hatter) filed a new lawsuit alleging that their compensation had been diminished unconstitutionally. In *Beer v. United States*, 361 F. App’x 150, 592 F.3d 1326 (Fed. Cir. 2010), the Federal Circuit summarily affirmed the dismissal of the complaint, reasoning that the case was controlled by *Williams*. The Supreme Court recently remanded the case to the federal circuit for consideration of a procedural issue.

Even if Congress has no constitutional obligation to award cost-of-living increases or set judicial salaries at any particular level, the question of how much judges should be paid deserves thoughtful consideration as a matter of policy.

Although federal judges so far have been unsuccessful in challenging the withholding of cost-of-living adjustments, a similar claim succeeded in *Maron v. Silver*, 925 N.E.2d 899 (N.Y. 2010). The New York Court of Appeals ruled that the state judiciary had been wrongly deprived of cost-of-living increases over an eleven-year period during which the real value of judicial salaries had declined almost 33%.

The decision did not rest on the state’s Compensation Clause, but rather on general principles of

separation of powers. The legislature had not explicitly reduced judicial salaries nor had it passed any measure that discriminated against judges economically. Rather, judicial pay remained frozen due to an unrelated political impasse between the governor and the legislature. Those officials had “fail[ed] to consider judicial compensation increases on the merits, and instead [held] them hostage to other legislative objectives,” which “threaten[ed] the structural independence of the Judiciary.”

Maron v. Silver did not explicitly hold that New York judges must receive cost-of-living pay increases. Requiring the political branches to consider the issue of

judicial pay raises “on the merits” does not direct the governor and the legislature to approve such raises. Because the parties accepted that the state judges “have earned and deserve a salary increase,” addressing the question of judicial pay “on the merits” seems inevitably to foreshadow some kind of upward salary adjustment.

It is far from clear whether *Maron v. Silver* will provide support for federal judges. For one thing, the New York court thought that *Hatter* and other federal cases did not outlaw indirect diminution of judicial salaries as a result of inflation. At the same time, some of the reasoning in *Maron v. Silver* appears to be inconsistent with the Supreme Court’s view of the federal Compensation Clause. The New York court found no impermissible diminution of judicial salaries in part because legislators, the governor, and other constitutional officers also had not received pay raises. In *Will*, however, the Supreme Court found it irrelevant that other federal officials suffered the same financial injury because those other officials did not enjoy the explicit protection against salary diminution that the Compensation Clause accords to Article III judges.

Nevertheless, the persistent failure to provide New York judges with cost-of-living increases over an eleven-year period appears to be a more compelling case for finding an impermissible diminution in judicial compensation than the erratic course of such increases for federal judges over the past two decades. Still, the 2001 federal legislation requiring specific congressional approval for increasing judicial salaries might constitute the type of discrimination that could run afoul of the federal Compensation Clause. Even if Congress has no constitutional obligation to award cost-of-living increases or set judicial salaries at any particular level, the question of how much judges should be paid deserves thoughtful consideration as a matter of policy.

JUDICIAL COMPENSATION AS A POLICY ISSUE

The failure to award federal judges cost-of-living increases in about one-third of the years since passage of the Ethics Reform Act has generated widespread criticism and concern. Justice Breyer addressed the erosion of judicial compensation both in *Hatter* and in his dissent from the denial of certiorari in *Williams*. Chief Justice Rehnquist regularly called attention to judicial compensation in his annual state of the judiciary report; Chief Justice Roberts devoted his entire 2006 report to that subject and

has referred to it in almost all his other reports. Moreover, commentators and bar associations have decried the situation and called for higher judicial compensation to take account of inflation.

Chief Justice Roberts summarized the main points of concern in his 2006 report. Using 1969 as a baseline, he noted that in that year federal district judges were paid "21% more than the dean at a top law school and 43% more than its senior law professors," whereas in 2006 federal district judges were making "substantially less than—about half—what the deans and senior law professors at top schools [were] paid." Moreover, during the same period the average American worker's real wages had risen by 17.8% while federal judges' salaries had declined by 23.9%. While compensation was eroding, the composition of the federal judiciary also has changed so its members "are no longer drawn primarily from among the best lawyers in the practicing bar." Almost two-thirds of President Eisenhower's appointees to federal district courts came from the private bar, while just over one-third came from the public sector. Under President George W. Bush, however, less than 40% of district judges came to the bench from the private sector, while about 60% came from the public sector. At the same time, attrition has increased, with larger numbers of judges leaving the bench: thirty-eight judges have done so since 2000. Other critics have pointed to institutional problems associated with judicial attrition. For example, departing judges take with them experience and expertise that are difficult to replace. Early departures result in larger dockets for remaining judges, at least until vacancies are filled, and the process for appointing judges has become increasingly time-consuming and contentious.

These are legitimate concerns, but we should not uncritically accept the diagnosis of impending doom. First, it is important to consider the baseline against which we measure trends in the real value of judicial compensation. It is quite common to use 1969 for this purpose, but that year might bias conclusions about the effects of inflation. Federal judicial salaries increased substantially in 1969, reaching their highest value in real terms since 1913. Using 1986 as a starting point might suggest a different conclusion: in real terms, judicial salaries in 2006 were more than 14% higher than they were two decades earlier. In other words, the choice of baseline can affect the interpretation of trends in judicial compensation.

Second, it is also important to consider the baseline for assessing the background of newly appointed federal judges. Chief Justice Roberts focused on the Eisenhower administration, but that era might have been atypical. Eisenhower appointed an unusually high percentage of his district judges directly from private practice. In recent years, more newly appointed federal district judges have had previous experience on the bench, either as state judges or as federal magistrate or bankruptcy judges. Is it better or worse to have a more "professional" federal judiciary? Those who deplore the reduction in the proportion of private practitioners on the bench have not offered a systematic argument in support of their position.

Third, advocates for increasing judicial compensation point to the number of judges who resign for financial reasons. Much of the evidence adduced in support of this concern is anecdotal. Even one analyst who found a statistically significant relationship between compensation and resignation concedes that "[t]he total number of judicial resignations is quite low, even in recent years, so it is hard to speak of a 'crisis' of resignations."

Judges should be paid fairly, but judicial service offers more than financial rewards. If, as Chief Justice Roberts suggested at his confirmation hearing, the role of a judge is analogous to that of a baseball umpire, the ability to decide rather than simply to argue must represent a significant attraction. Recall the umpire who, when asked whether a pitch was a ball or a strike, replied: "It ain't nothing 'til I say so." Those who believe that the courts are facing a crisis of retention and recruitment due to inadequate judicial salaries typically do not suggest what level of compensation they regard as appropriate or necessary to remedy the problem. Beyond that, we ought to be deeply skeptical about anyone who seeks a judicial position primarily for the salary. Charles Evans Hughes wisely observed that "we should be cautious about increasing the chance of drawing [people] to the public service who seek it for the sake of the compensation," and added that, "to attract good [people] and to secure efficiency, the honour and independence of the office are of far greater account than the emoluments that attach to it." ■

A longer version of this article appears in 2011 *Utah Law Review* 25.

PROTECTING

Gideon v. Wainwright

Professor Michael Benza observes the modern day trials that test the right to counsel

"When at the time of the petitioners [sic] trial. He ask [sic] the lower court for the aid of counsel. The court refused this aid [sic] Petitioner told the court that this court had made [sic] decision to the effect that all citizens tried for felony crime should have aid of counsel. the [sic] lower court ignored this plea."¹ This was the claim that Clarence Gideon presented to the Supreme Court of the United States. It is a simple claim and one that most Americans probably would have agreed with. It's a simple concept really: no one should be forced to stand trial on criminal charges without an attorney by her side. The state has all of its resources focused on convicting the person. At least she should have someone to stand up for her.

Ultimately the Supreme Court agreed with Clarence and guaranteed that every person facing the loss of liberty would have an attorney. In doing so the Court held that "The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours."²

The "War on Terror" does not present a new challenge to the rule of law. It is an age old challenge that we have faced since the founding of the Republic. The challenge we face, even well before *Gideon v. Wainwright*, is to give effect to this right to counsel. The rule of law is most tested in those cases where our most basic instincts take over. Whether it is British soldiers facing charges from the Boston Massacre, the Scottsboro Boys in 1931 Alabama, Zacarias Moussaoui in 2006 Virginia, or Frank Spisak in 1984 Cleveland. Those that we are most afraid of or most angry at are those that are the most in need of the rule of law. It is when public sentiment and outrage is most strongly against an accused person that the defense attorney is most needed. John Adams probably put it best when he agreed to represent the British soldiers: "Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passion, they cannot alter the state of facts and evidence."³ Six of the soldiers were acquitted. Two who had fired directly into the crowd were charged with murder but were convicted only of manslaughter.

The Scottsboro Boys case is notorious for many reasons but the rule of law is most critical. Nine young African American boys were charged with raping two white women. In Alabama, as in most if not all Southern states, this was a capital offense. When no lawyer stood up for the defendants the judge appointed the entire bar to represent them. Now you might think this was a great thing, especially since nearly every lawyer who could get to the courthouse was in the courtroom that day. And yet not one Alabama lawyer crossed the bar to sit at counsel table.

The boys were arrested on March 25, 1931, indicted on capital charges on March 30, tried on April 6 and sentenced to death on April 7, 1931. To most people in 1931 Alabama, justice was served, the system worked and the case was over except for the executions. Instead, outside lawyers stepped in and the case goes up and down through the courts, including two separate reviews and reversals of convictions by the Supreme Court of the United States, and at least seven trials.⁴ Four of the nine were ultimately convicted of the rape charges, one convicted of an unrelated assault charge, and the other five were acquitted.

And for Frank Spisak, charged with killing three people, shooting and wounding another, and shooting at another.⁵ During the capital trial Frances grew a Hitler mustache, took the stand and confessed the crimes, spouted two days of testimony filled with Nazi hate, and was convicted and sentenced to death. The case was, at the time, one of the highest profile cases in Cuyahoga County.



— Michael Benza
Visiting Associate Professor



She is looking at a man who is handcuffed behind his back. The man is looking down. The judge is looking at the man.

I will give you a flavor of the case with part of the closing argument:

Turn and look at [Spisak]. And let me suggest to you, and we are talking about aggravating circumstances, if each drop of blood in this sick demented body were full of atonement for the anguish, the terror, the aggravating circumstances that we have seen here, ladies and gentlemen, it wouldn't be enough. It wouldn't be enough to repay. It wouldn't be enough because there are too many empty places in those 1983 family portraits. And there was too much life left to live for Timothy Sheehan, Horace Rickerson and Brian Warford.

Sympathy, of course, is not a part of your consideration. And even if it was, certainly, don't look to [Spisak] for sympathy, because he demands none. And ladies and gentlemen, when you turn and look at Frank Spisak, don't look for good deeds, because he has done none. Don't look for good thoughts, because he has none.

And ladies and gentlemen, don't look to [Spisak] with the hope that he can be rehabilitated, because he can't be. He is sick, he is twisted. He is demented, and he is never going to be any different.

Now before you ask where was the defense attorney, you should know this was what the defense attorney stated just before the jury was sent back to decide whether Frances should live or die. And this was the issue before the Supreme Court.

The Court agreed that the lawyer did not do what we expect lawyers to do but found that even if he had done what was expected and required the outcome would have been the same. As Justice Stevens wrote, "In my judgment even the most skillful of closing arguments—even one befitting Clarence Darrow—would not have created a reasonable probability of a different outcome in this case."⁶

Of course what was missing was the fact that we had won the case four times - twice before the Panel in the Sixth Circuit and twice convincing the entire Sixth Circuit to not hear the case.

But do not rest the promise of *Gideon* on the thought "he might be innocent." The power of *Gideon* is that the promise extends to every defendant regardless of how strong or weak the prosecution's case may be. Remember, every Innocence Project exoneree was convicted in a courtroom under the protections of *Gideon*. Because mistakes can, will, and are made, only by zealously guarding *Gideon* can we satisfy our fundamental concept of justice. Because we cannot tell the innocent from the guilty we extend this promise to everyone.

That is what makes this challenge so critical for us to meet. The job of the defense attorney, for every defendant whether he is a Guantanamo detainee, Frances Spisak, or Clarence Gideon, is to stand with the defendant, to fight for him when everyone else is against him, and to call out that the emperor has no clothes. And if you do that then eventually, maybe, we'll stand when you walk by because you stood when we didn't, couldn't or wouldn't stand ourselves. ■

This paper reflects Professor Benza's prepared remarks to the Geauga County Bar Association, the League of Women Voters of Geauga County and the Geauga County Public Library's Law Day program, "The Rule of Law and Defense of the Rights of the Accused," given on April 27, 2011.

¹ Petition for Writ of Certiorari, *Gideon v. Wainwright*, Case No. 62-155 available at <http://www.nacdl.org/public.nsf/GideonAnniversary/pleadings?opendocument>.

² *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963).

³ John Adams, "Argument in Defense of the Soldiers in the Boston Massacre Trials," December 1770, U.S. Diplomat & Politician (1735 - 1826).

⁴ See *Powell v. Alabama*, 287 U.S. 45 (1932).

⁵ In full disclosure I represented Frances before the Supreme Court of the United States and attended Frances's execution.

⁶ *Smith v. Spisak*, 130 S.Ct. 676, 693 (2010).

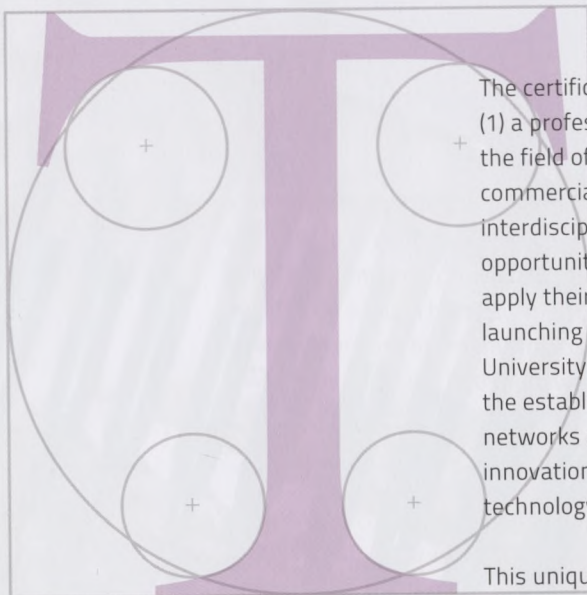


New Interdisciplinary Graduate Program

Professor Craig Nard explains FUSION, a new graduate-level certificate program that blends legal, scientific, and management disciplines to bring inventions and technology to the marketplace

This fall, the Center for Law, Technology & the Arts at Case Western Reserve University plans to launch FUSION, a Graduate Certificate Program in Design, Innovation, and Intellectual Property Management.

The goal of this graduate level certificate program is to provide students with a nationally-distinctive academic program that blends legal, scientific and management disciplines to drive leadership and guide students through the complex path of cultivating the commercial potential of complex scientific discovery. ►



The certificate program is designed to provide (1) a professional skills-driven approach to the field of innovation management commercialization; (2) graduate-level, interdisciplinary coursework in the field; (3) opportunities for students and faculty to apply their substantive knowledge; and (4) a launching point among Case Western Reserve University students, faculty, and alumni for the establishment of regional and national networks and leadership in the field of innovation management and technology-based economic development.

This unique program provides an interdisciplinary environment tailored to candidates in the Case Western Reserve University MBA, MD, JD, and Doctoral Science/Engineering programs.

Six courses comprise a curriculum that reflects the following key themes:

- Interdisciplinary teams of students work together on complex scientific, legal, and industry challenges.
- Students are exposed to the technical substance of broad spectrum opportunity assessment and innovation management, with a working exposure to national leaders in the field of design, entrepreneurship, and venture finance.
- Students learn to apply models for cultivating, valuing, and commercializing innovative technology, that are built upon intellectual property fundamentals from both legal and business perspectives.

This program also encompasses network development through mini-courses and interim-fellowships. Throughout the program, students will be exposed to the theory and practice of technology-based economic development and gain a general understanding of how these approaches can impact the growth of technology industries and companies, and some of the specific skills needed to raise developmental funding for their technological endeavors.

To supplement the classroom curriculum, the program exposes students to a network of national experts who can provide them with deep exposure to strategically important areas that impact the path-to-market for a given technology. Because a formulaic approach to innovation is insufficient, the program will rely on direct interaction between students and recognized leaders in commercial arenas. Such interaction is intended to prepare program graduates by providing three critical skills that can lead to success: (1) an invaluable network of experts, many of whom are Case Western Reserve University alumni, who can be called upon as assets during real-world commercialization activities; (2) inspiration begat by exposure to success — often the recognition of one's ability to create value comes not from an analytical approach, but rather from recognition of one's own traits in successful individuals; and (3) shared insight and experience from those who have achieved success in the commercial arenas most attractive to the students.

Representative events and short courses relating to technology-based commercialization would include the following:

Capitalist Forum – A twice-annual, two-day event, conducted in coordination with the Case Western Reserve University Office of Institutional Development, to provide multi-faceted interaction of students with national business leaders, many of whom are university alumni.

Federal Regulation – A two-day seminar covering the ins and outs of Food and Drug Administration requirements related to new medical devices and therapeutic products. As FUSION expands to include additional disciplines (e.g. advanced energy), other key federal regulatory perspectives will be provided.



– Craig A. Nard
Tom J.E. and Bette Lou Walker
Professor of Law; Founding Director
of the Center for Law, Technology
and the Arts

To supplement the classroom curriculum, the program exposes students to a network of national experts who can provide them with deep exposure to strategically important areas that impact the path-to-market for a given technology.

Customer and Payor Requirements – A series of workshops related to the most-critical element of business: accessing revenue through transactions with customers, whether they are consumers, industrial clients, or practitioner/payors. In the case of practitioner/payors, information will be provided about the strategic and regulatory process of developing a payment and reimbursement regime for new medical products.

Industry Dynamics – A series of day-long seminars related to key segments in the technology industries that are likely growth opportunities for students, such as advanced energy, bioscience/healthcare, and information technologies.

Wherever practicable, workshop leaders would be engaged as Program Fellows, providing opportunities for ongoing interaction, formal publication of workshop content, and cultivation of new content and curriculum.

In addition to coursework, experiential learning opportunities will be offered to further develop a substantive understanding through exposure to working situations. Key components to apply substantive learning are intended to include:

Community Engagement– Case Western Reserve University has had a high level of success placing its graduates in jobs. Building on this success, the program will provide co-op and internship experiences at area companies. Further, students would actively engage with organizations with the purpose of bringing new technologies to market (e.g., BioEnterprise, Nortech, JumpStart and other tech-based economic development groups).

Consulting– The skills developed by student teams working within the program can represent an unusual value to industry. To the extent practicable, student/faculty teams would be assembled to provide analysis of opportunities, strategic research, and other services that can help small and large companies manage the process of bringing new technology to market. Natural deliverables these teams could deliver to industry include programmatic training and systems development in the field of structured innovation.

"This nationally distinctive, interdisciplinary program will prepare our students to become leaders in the field of innovation management," says law professor Craig A. Nard, a founding faculty member of FUSION, and the Tom J.E. and Bette Lou Walker Professor of Law.

"In the FUSION program, we address the commercialization of scientific inventions — from early discovery to proof of concept, to final product," says Joe Jankowski, PhD, Associate Vice President in the Technology Transfer Office at Case Western Reserve University. "For example, students learn to analyze a life-science business opportunity from a multi-disciplinary perspective. They construct business models that consider potential market impacts, competitive environments and ethical and social implications that often drive the potential for acceptance by healthcare practitioners."

The program's core objectives are to enhance the potential success of students in their careers, providing the skills and confidence needed to make sound, creative decisions regarding the strategic potential of complex intellectual property and technology opportunities. The program allows our graduates to hit the ground running and be highly competitive in the world of innovation and technology commercialization. ■

JONATHAN ADLER

PROFESSOR OF LAW AND DIRECTOR OF THE CENTER FOR BUSINESS LAW AND REGULATION

Publications

The Problems with Precaution: A Principle without Principle, CROP CHEMOPHOBIA: WILL PRECAUTION KILL THE GREEN REVOLUTION? (J. Entine, ed., 2010).

REBUILDING THE ARK. NEW PERSPECTIVES ON ENDANGERED SPECIES ACT REFORM (Editor, 2011).

"Eyes on a Climate Prize: Rewarding Energy Innovation to Achieve Climate Stabilization," 35 *Harvard Environmental Law Review* 1 (2011).

"Heat Expands All Things: The Proliferation of Greenhouse Gas Regulation under the Obama Administration," 34 *Harvard Journal of Law & Public Policy* 421 (2011).

(Mostly) *Realism on Global Warming* (Review of R. PIELKE'S THE CLIMATE FIX), REGULATION vol. 34, no. 1 (2011).

"The Constitutionality of the Individual Mandate in the Affordable Care Act (with Erik Jensen)," *Cleveland Metropolitan Bar Journal*, March 2011.

Presentations

Professor Adler presented, "Alternatives to Cap and Trade," Federalist Society Student Chapter, Environmental Law Society, and *Harvard Environmental Law Review*, Harvard Law School, February 3, 2011.

Professor Adler presented, "Conservation without Regulation: Property Rights and Environmental Protection," Campbell University Business School, February 7, 2011.

Professor Adler presented, "Cooperation, Commandeering, or Crowding Out? Federal Intervention and State Choices in Health Care Policy," *Kansas Journal of Law and Public*

Policy symposium on "The Role of States in Federal Health Care Reform," University of Kansas School of Law, February 11, 2011.

Professor Adler presented, "Reining in Federal Regulations," Indianapolis Lawyer's Chapter of the Federalist Society, Indianapolis, IN, February 22, 2011.

Professor Adler presented, Participant, Panel on "Federalism and Interstate Competition," 30th Annual Federalist Society Student Symposium on "Capitalism, Markets, and the Constitution," at the University of Virginia in Charlottesville, February 26, 2011.

Professor Adler presented, "Health Care Reform and the Future of Federalism," Birmingham lawyers chapter of the Federalist Society, Birmingham, AL, March 1, 2011.

Professor Adler presented, "The Fable of Federal Environmental Regulation," University of Alabama student chapter of the Federalist Society, March 2, 2011.

Activities

Professor Adler was interviewed on National Public Radio's "To the Point" program on legal challenges to health care reform legislation, December 15, 2010. Professor Adler was also quoted on the health care reform litigation by Bloomberg News, the Chicago Tribune, Washington Post, Wall Street Journal Law Blog, National Journal, and Talking Point Memo, among other media outlets.

Professor Adler testified before the House Judiciary Committee Subcommittee on Courts, Commercial and Administrative Law on the Regulations of the Executive In Needs of Scrutiny (REINS) Act on January 24, 2011. The hearing was covered by E&E Daily among other trade publications and broadcast on C-Span.

Professor Adler taught a course on "The Modern Supreme Court," for the CWRU Office of Continuing Education's "Senior Scholars" program in Spring 2011.

Professor Adler appeared on National Public Radio's Diane Rehm Show to discuss the Endangered Species Act on May 3. Professor Adler also had a commentary on the ESA on the New York Times website, April 22, 2011.

Professor Adler was guest editor for a book review symposium on Regulation by Litigation in the peer-reviewed interdisciplinary journal, *Regulation & Governance*.

JESSICA WILEN BERG

PROFESSOR OF LAW; PROFESSOR OF BIOETHICS; PROFESSOR OF EPIDEMIOLOGY AND BIostatISTICS; ASSOCIATE DIRECTOR OF THE LAW-MEDICINE CENTER

Publications

"Ethical and Legal Issues in Enhancement Research on Human Subjects," 20 *Cambridge Quarterly of Healthcare Ethics* 30-45, 2011 (with Mehlman, Juengst and Kodish).

Presentations

Professor Berg was the introductory speaker at a session entitled "At the Crossroads of Gender" for American Society of Bioethics and Humanities Annual Meeting, San Diego October 22, 2010.

Professor Berg presented her work on Social Justice and Involuntary Confinement at the American Public Health Association Annual Meeting, Denver, November 8, 2010.

Professor Berg gave a workshop entitled "Who owns your genetic material? The case of the *Havasupai Tribe v. ASU*" to the World Health Interest Group in Cleveland February 4, 2011.

Professor Berg was an invited member and presenter at an NIH Working Group to discuss "Ethical Issues in Research with EHRs," National Health Lung Blood Institute, NIH, Washington DC, March 11, 2011.

Professor Berg was an invited speaker to discuss her work on enhancement research and children at the Clinical Research in

Meet with the Career Services Office

Do you have information or advice you'd like to share with the Career Services Office? Our Director of Employer Outreach regularly travels the country to meet with alumni and employers. If you'd like to schedule a meeting, send an email to lawrecruiting@case.edu.

FACULTY BRIEFS

Ophthalmology and Dermatology Conference in San Francisco July 8, 2011.

Activities

Professor Berg is Chair of the University Callahan Distinguished Lecture Series for the 2011-2012 term.

Professor Berg was elected to the Executive Committee of the Faculty Senate for the 2011-2012 term.

Professor Berg was appointed to Stem Cell Research Oversight Board, Case Western Reserve University.

GEORGE W. DENT, JR.

SCHOTT-VAN DEN EYNDEN PROFESSOR OF BUSINESS ORGANIZATIONS LAW

Publications

"Reflections on *Enterprise Architects*," 2011 *Transactions: The Tennessee Journal of Business Law* 179.

"The Official Ideology of American Law Schools," 24 *Academic Questions* 185 (No. 2, 2011).

"Visions of a World Without Blood Ties," 2 *International Journal of the Jurisprudence of the Family* (forthcoming 2011).

"No Difference?: An Analysis of Same-Sex Parenting," *Ave Maria Law Review* (forthcoming 2011).

"Straight Is Better: Why Law and Society May Justly Prefer Heterosexuality," 15 *Texas Review of Law & Politics* (forthcoming 2011).

"*Perry v. Schwarzenegger*: Is Traditional Marriage Unconstitutional?," *Engage* (forthcoming 2011).

Presentations

Professor Dent spoke to the International Society of Family Law, Caribbean Regional Conference in Nassau, The Bahamas, on Same-Sex Parenting and Assisted Reproduction on March 18, 2011.

Professor Dent spoke about Attacks on the Biological Family at the Symposium on Parenting and Culture held at the Pontifical Catholic University of Argentina in Buenos Aires on May 12, 2011.

JONATHAN L. ENTIN

PROFESSOR OF LAW AND POLITICAL SCIENCE

Publications

"Of Squares and Uncouth Twenty-Eight-Sided Figures: Reflections on *Gomillion v. Lightfoot* After Half a Century," 50 *Washburn Law Journal* 133 (2010) (part of a symposium on political powerlessness and constitutional interpretation).

"Justice Thomas, Race, and the Constitution through the Lens of Booker T. Washington and W.E.B. Du Bois," *University of Detroit Mercy Law Review* (in press) (part of a symposium reflecting on the twentieth anniversary of Justice Thomas's appointment).

"Law School Clinics and the First Amendment," 61 *Case Western Reserve Law Review* (in press).

"Getting What You Pay For: Judicial Compensation and Judicial Independence," 2011 *Utah Law Review* 25.

Presentations

Professor Entin spoke at a symposium about Justice Clarence Thomas at the University of Detroit Mercy in March 2011.

Professor Entin spoke about his article on *Gomillion v. Lightfoot* at the Northeast Ohio Faculty Colloquium in April 2011.

Professor Entin spoke at a program about the Pentagon Papers case that was sponsored by Ideastream, the Cleveland-based public radio and television organization. One of the other speakers was Daniel Ellsberg, who made the Pentagon Papers available to the New York Times and the Washington Post and thus precipitated the litigation that culminated in a landmark 1971 Supreme Court decision.

Professor Entin drafted the provisions relating to administrative judges for a meeting of an international working group on judicial independence that met in Vienna in May 2011.

Professor Entin spoke at several sessions during the Association of American Law Schools conference on "The Future of the Law School Curriculum" in June 2011.

Activities

Professor Entin was interviewed by WKSU-FM and WOIO-TV and quoted by the Plain Dealer in connection with developments in the Cuyahoga County political corruption scandal.

Professor Entin was quoted in a Sun Press article about Professor Laura Chisolm.

Professor Entin was quoted in Cincinnati Enquirer and Plain Dealer articles about issues relating to the casinos that were authorized by a 2009 amendment to the Ohio Constitution.

Professor Entin was quoted in a Plain Dealer article about the legal and political controversy relating to the financing of a proposed highway interchange.

Professor Entin was interviewed by WKYC-TV in Cleveland and quoted by Talking Points Memo about the controversy surrounding S.B. 5, which restricts collective bargaining by Ohio public employees.

Professor Entin was quoted in two Plain Dealer articles about *Ortiz v. Jordan*, the Supreme Court case that was argued successfully by Adjunct Professor David Mills.

Professor Entin was interviewed by WOIO-TV in Cleveland about the implications of the 2010 Census for congressional and legislative districting in Ohio.

Professor Entin was interviewed by WKSU-FM about legal issues relating to red-light cameras.

Professor Entin was quoted by the Plain Dealer in several articles about litigation arising from the transition to the new Cuyahoga County government.

PAUL C. GIANNELLI

ALBERT J. WEATHERHEAD III AND RICHARD W. WEATHERHEAD PROFESSOR, DISTINGUISHED UNIVERSITY PROFESSOR

Publications

Supplement, *SCIENTIFIC EVIDENCE* (Lexis Co. 4th ed. 2007) (with Imwinkelried) (2 volumes).

Supplement, *BALDWIN'S OHIO PRACTICE, EVIDENCE* (West Co. 2d ed. 2010) (2 volumes).

FACULTY BRIEFS

COURTROOM CRIMINAL EVIDENCE (Lexis Co. 5th ed. 2011) (with Imwinkelried et al.).

OHIO JUVENILE LAW (West Co. 2011) (with Salvador).

OHIO EVIDENCE HANDBOOK (West Co. 2011).

OHIO CRIMINAL LAWS AND RULES (West Co. 2011 rev.) (with Katz).

"Daubert and Forensic Science: The Pitfalls of Law Enforcement Control of Scientific Research," 2111 *U. Illinois L. Rev.* 53.

"Forensic Science: Why No Research?," 38 *Fordham Urban Law Journal* 503 (2011).

Presentations

Professor Giannelli gave a lecture on "Misleading Testimony," American Academy of Forensic Science, on February 24, 2011 in Chicago.

Professor Giannelli gave a lecture on the "National Academy of Sciences Forensics Report," Mercer Law School, April 3, 2011, in Macon, Georgia.

Professor Giannelli gave a lecture on the National Academy of Sciences Forensics Report, Texas Prosecutors Conference, April 8, 2011, in Palin, Texas.

Professor Giannelli and Wendy Wagner, Texas Law School, gave a lecture of "Bending Science," Science Café, May 9, 2011, in Cleveland.

Professor Giannelli moderated a panel on Ethics in Criminal Cases, ABA Conference, Fordham Law School on June 3, 2011 in New York.

Activities

Professor Giannelli was interviewed, along with Wendy Wagner, Texas Law School, on Public Radio, WCPN Sound of Ideas, on May 9, 2011.

RICHARD GORDON PROFESSOR OF LAW

Publications

INDICATORS FOR TERRORISM FINANCING THROUGH FINANCIAL INSTITUTIONS IN THE UNITED STATES (World Bank 2011).

LAUNDERING THE PROCEEDS OF GRAND CORRUPTION THROUGH CORPORATE VEHICLES (with Emile van der Does de Willebois, Jason Sharman, and others)(World Bank 2011).

"Losing the War against Dirty Money: Rethinking Global Standards on Preventing Money Laundering and Terrorism Financing," 21 *Duke J. Comp. & Int'l L.* (in press).

Presentations

Professor Gordon spoke on banking regulation to a group of bank CEOs and government officials from Pakistan on April 20, 2011 in Cleveland, Ohio.

Professor Gordon gave a featured presentation to the International Corporate Registers Forum on May 7, 2011 in Singapore. The presentation, titled "The Misuse of Corporate Vehicles Project: The role of corporate registries in finding the elusive beneficial owner," was based on the monograph LAUNDERING THE PROCEEDS OF GRAND CORRUPTION THROUGH CORPORATE VEHICLES.

Professor Gordon participated as an invited expert in an international experts meeting on the U.N. Convention against Corruption, sponsored by the U.N. Office of Drugs and Crime and Northeastern University, on May 24 and 25, 2011 in Boston, MA.

Professor Gordon led a seminar for Pakistani government officials on preventing and detecting official corruption, based on Richard Gordon, LAUNDERING THE PROCEEDS OF GRAND CORRUPTION THROUGH CORPORATE VEHICLES (World Bank 2009) on July 5 and 6, 2011 in Amman, Jordan.

School of Law raises \$1,091,219 for Annual Fund

The law school is extremely pleased to announce surpassing its \$1 million Annual Fund goal. The law school thanks all of our alumni and friends who made 2010-2011 such a huge success, and whose support will leave an indelible impact on our law students.

The Annual Fund provides scholarship support and resources for our students, ensuring the success of our future leaders in the legal field. All gifts to the Annual Fund are important and have an immediate impact. When you support the law school, you not only help the students of today, but you continue to build on the strong tradition of the past.

To learn more about the Annual Fund visit <http://www.law.case.edu/Support/AnnualFund.aspx>

FACULTY BRIEFS

JON GROETZINGER, JR.

VISITING PROFESSOR OF LAW

Presentations

Professor Groetzinger presented a webinar on "Complying with the Foreign Corrupt Practices Act: Latest Developments" to lawyers and corporate executives through ComplianceOnline.com on April 28, 2011.

JESSIE HILL

PROFESSOR OF LAW AND DIRECTOR OF THE CENTER FOR SOCIAL JUSTICE

Publications

"Introduction: Reproductive Rights, Human Rights, and The Human Right to Health," 60 *Case Western Reserve Law Review* 951 (2010).

"Whose Body? Whose Soul? Medical Decision-Making on Behalf of Children and the Free Exercise Clause Before and After *Employment Division v. Smith*," 32 *Cardozo Law Review* 1857 (2011).

"Introduction: Government Speech," 61 *Case Western Reserve Law Review* (forthcoming 2011).

Presentations

Professor Hill spoke on a panel on the Obama conscience regulation, sponsored by the Federalist Society, at Georgetown Law School on April 14, 2011.

Professor Hill gave a plenary lecture entitled "Summary of Legal Trends in Adolescent Decision-Making" at the Roundtable on Adolescent Decision-Making, University of Maryland School of Law on April 15, 2011.

Professor Hill debated State Senator Larry Obhof at the City Club of Cleveland on the subject "Is the Affordable Care Act Constitutional?" on April 18, 2011.

Activities

Co-Chair, Program Committee of the AALS Section on Law and Religion.

SHARONA HOFFMAN

PROFESSOR OF LAW AND BIOETHICS;
CO-DIRECTOR OF THE LAW-MEDICINE
CENTER

Publications

"The Importance of Immutability in Employment Discrimination Law," 52 *William & Mary Law Review* 1483 (2011).

Presentations

Professor Hoffman presented, "The Promise of E-Health: Patient Safety, Provider Liability, and Health Information Technology," American Health Lawyers Association lunch speaker, Las Vegas, Nevada, February 10, 2011.

Professor Hoffman was invited to be a session leader at a workshop on Electronic Health Record Research Priorities conducted by the National Institutes of Health National Heart, Lung, and Blood Institute on March 10-11, 2011. She presented a talk entitled "De-identified EHRs & Research: Privacy v. Scientific Priorities."

Professor Hoffman presented "E-Health Hazards: Provider Liability and Electronic Health Record Systems" at the Medicine 2.0 Legal and Ethical Dilemmas of Online Medicine International Conference. The conference took place on April 7, 2011 at the University of Haifa Law School in Israel.

Professor Hoffman served as a panelist at an Equal Employment Opportunity Commission seminar entitled "Bridging the Gender Wage Gap" in Cleveland on May 4, 2011.

Professor Hoffman presented "Meaningful Use and Certification of Health Information Technology: What About Safety?" at the annual Health Law Professors Conference in Chicago on June 11, 2011.

Activities

Professor Hoffman was appointed Treasurer of the Privacy & Defamation Section of the Association of American Law Schools for 2011-2012.

Professor Hoffman taught a course entitled "Health Care and Human Rights" in Utrecht, the Netherlands in the summer of 2011. The course was offered through the Washington

University School of Law-Case Western Reserve University School of Law Summer Abroad Program, the Summer Institute for Global Justice.

Professor Hoffman was quoted in *Physicians Practice* on January 6, 2011 in an article entitled "E-mailing Yourself from the Office? Proceed with Caution."

Physicians Practice featured Professor Hoffman in a podcast addressing legal repercussions of technology in the medical field. The Podcast, posted on February 8, 2011, can be accessed at <http://www.physicianspractice.com/podcasts/content/article/1462168/1792736>

The Duke Chronicle quoted Sharona Hoffman on an investigation of alleged research inconsistent in clinical trials in an article entitled "NC law firm investigates Potti trials" on February 11, 2011.

ERIK M. JENSEN

DAVID L. BRENNAN PROFESSOR OF LAW

Publications

"Hands Off My Purse! Why Money Bills Originate in the House," Heritage Foundation First Principles Series (Jan. 27, 2011) (<http://www.heritage.org/Research/Reports/2011/01/Hand-Off-My-Purse-Why-Money-Bills-Originate-in-the-House>).

"Quirky Constitutional Provisions Matter: The Tonnage Clause, Polar Tankers, and State Taxation of Commerce," 18 *George Mason Law Review* 669 (2011).

"Prepositions in the Constitution," 14 *Green Bag*, 2d 163 (2011).

"The More Things Change—Much Talk of Reform, But Are Real Results Likely?" *Journal of Taxation of Investments*, Spring 2011, at 89.

"The Constitutionality of the Individual Mandate in the Affordable Care Act," *Cleveland Metropolitan Bar Journal*, March 2011, at 10 (with Jonathan H. Adler).

"Sin Taxes: Taxes Aren't Always the Answer," American Government ABC-CLIO, 2011. (<http://americangovernment.abc-clio.com/>)

"The Sale of State Tax Credits: A Tax Court Decision Isn't a *Tempel* of Doom," *Journal of Taxation of Investments*, Summer 2011, at 91.

"A Comment on Commas," 14 *Green Bag*, 2d (forthcoming).

Presentations

Professor Jensen was a speaker at meetings of the Committee on Sales, Exchanges, and Basis of the ABA Section of Taxation in January in Boca Raton and in May in Washington.

LEWIS R. KATZ

JOHN C. HUTCHINS PROFESSOR OF LAW

Publications

OHIO ARREST SEARCH AND SEIZURE (Thomson/West 20th edition, June, 2011).

BALDWIN'S OHIO PRACTICE: OHIO CRIMINAL LAWS AND RULES (Thomson/West 2011) (with Paul C. Giannelli).

NEW YORK SUPPRESSION MANUAL: ARREST, SEARCH & SEIZURE, CONFESSIONS, AND IDENTIFICATION (2011 supplement) (Lexis/Nexis 2011) (with Jay Shapiro).

BALDWIN'S OHIO PRACTICE: CRIMINAL LAW (2011 supplement) (Thomson/West 2011) (with Paul Giannelli, Judy Lipton, Phyllis Crocker, John Martin).

Presentations

Professor Katz did Fourth Amendment presentations September 16, 2010 (Ohio Criminal Defense Attorneys Association) and March 24, 2011 (CWRU Law Alumni Association at Baker & Hostetler).

IRINA MANTA

ASSISTANT PROFESSOR OF LAW

Publications

"The Puzzle of Criminal Sanctions for Intellectual Property Infringement," 24 *Harv. J.L. & Tech* 469 (2011).

Presentations

Professor Manta presented, "The Reasonably Biased Man: Objective Tests, Jury Effects, and the Copyright Dilemma" at the Law & Society Association Annual Meeting in San Francisco in June, 2011.

KENNETH R. MARGOLIS

PROFESSOR OF LAW; CO-DIRECTOR, MILTON A. KRAMER LAW CLINIC CENTER; DIRECTOR, CASEARC INTEGRATED LAWYERING SKILLS PROGRAM

Presentations

Professor Margolis co-presented a workshop on "Teaching Lawyer Effectiveness Across the Curriculum" on June 3, 2011 at the Institute for Law Teaching and Learning Conference held at New York Law School. In this presentation, Professor Margolis and his co-facilitator led the workshop participants in exercises designed to integrate experiential education and the teaching of fundamental lawyering skills into courses beyond clinics, externships or labs.

On June 16, 2011, at the AALS Conference of the Section of Clinical Legal Education held in Seattle, Washington, Professor Margolis participated in a panel discussion entitled "Solving the Problem of Curricular Reform." In this presentation Professor Margolis discussed the process of adoption and implementation of the CaseArc Integrated Lawyering Skills Program.

KATHRYN LYNN MERCER

PROFESSOR OF LAWYERING SKILLS

Presentations

Professor Mercer presented a workshop entitled, "Cross Cultural Negotiation – Common Rituals and Communication Differences" in Chicago at the 2011 Global Legal Skills Conference, The John Marshall Law School on May 6, 2011.

Activities

Professor Mercer was appointed as American Delegation Member and Judge for the 2011 International Negotiation Competition in Copenhagen, Denmark in July, 2011.

ANDREW S. POLLIS

ASSISTANT PROFESSOR OF LAW

Publications

"The Need for Non-Discretionary Interlocutory Appellate Review in Multidistrict Litigation," 79 *Fordham Law Review* 1643 (2011).

OHIO APPELLATE PRACTICE (Thomson/West Baldwin's Ohio Handbook Series, forthcoming 2011-12 ed., with Mark P. Painter).

Presentations

Professor Pollis recorded a "Sound Advice" tip on "Appellate Jurisdiction" for the ABA Section of Litigation, which the ABA posted on May 10, 2011 (see http://www.americanbar.org/groups/litigation/resources/sound_advice.html/).

Professor Pollis moderated a panel on Ethics and Discovery in the 21st Century for the ABA's Fifth Annual National Institute on E-Discovery, in Washington, DC on May 19, 2011.

Professor Pollis organized the Cleveland Metropolitan Bar Association seminar, "The Ins and Outs of Appellate Practice," held June 3, 2011. Professor Pollis also presented at the seminar, on issues of Ohio appellate jurisdiction.

Professor Pollis served as a working-group discussion leader on Community Lawyering at the AALS Conference on Clinical Legal Education in Seattle, Washington, June 13-16, 2011.

Activities

In January 2011, The United States Supreme Court unanimously reversed the Sixth Circuit in *Ortiz v. Jordan*, 131 S. Ct. 884 (2011), in which Professor Pollis served as co-counsel to Adjunct Professor David Mills. The *Ortiz* decision clarified that a pretrial order denying summary judgment on the basis of factual disputes in the record is not reviewable after the facts are resolved at trial.

In February 2011, Professor Pollis supervised two students in the Milton A. Kramer Law Clinic in handling a jury trial on behalf of a family victimized by a home-repair/mortgage-refinancing scheme. The jury awarded the family \$1,120,000 in compensatory, treble, and punitive damages, and the court added an additional \$50,000 in attorneys' fees to the final judgment. In January 2011, Professor Pollis supervised two other students in a similar case in which the judge awarded a Clinic client \$436,275 in compensatory and punitive damages, plus \$25,000 in attorneys' fees.

FACULTY BRIEFS

Professor Pollis has continued his work as counsel to the Appellate Rules Subcommittee of the Ohio Supreme Court Commission on the Rules of Practice and Procedure, chaired by Judge Mary Jane Trapp '81. Their proposed amendments to some of the Ohio Rules of Appellate Procedure went into effect in July 2011. Professor Pollis has drafted additional proposals for amendments that, if adopted, would go into effect in July 2012.

Professor Pollis has also continued his work as co-chair of the ABA Section of Litigation Consumer & Civil Rights Litigation Committee and as chair of the Cleveland Metropolitan Bar Association Appellate Courts Committee.

CASSANDRA BURKE ROBERTSON

ASSOCIATE PROFESSOR OF LAW

Publications

"A Collaborative Model of Offshore Legal Outsourcing," 43 *Arizona State Law Journal* 125 (2011).

"Forum Non Conveniens and the Enforcement of Foreign Judgments," 111 *Columbia Law Review* (forthcoming 2011), (co-authored with Christopher A. Whytock).

"Organizational Management of Conflicting Professional Identities," 43 *Case Western Reserve Journal of International Law* (forthcoming 2011, symposium issue).

Presentations

Professor Robertson presented "Forum Shoppers' Remorse," at the University of Pittsburgh School of Law on February 1, 2011.

Activities

Professor Robertson was selected by the Case Western Reserve University Center for Innovation in Teaching and Education to be a Glennan Fellow for 2011-2012.

Professor Robertson was awarded a CWRU Mather Spotlight Prize for Women's Scholarship for 2011.

MATTHEW ROSSMAN

PROFESSOR OF LAW

Publications

"Tax Increment Financing in Cleveland," *Development Finance Review Weekly* (Jan. 27, 2011) (available online at <http://www.cdfa.net>) (co-authored with CWRU law students Jason Kral '09 and Alexander McElroy '10).

"Pooling Tax Increment Financing for Redevelopment in Cleveland: The Las Vegas Model," *Development Finance Review Weekly* (Jan. 27, 2011) (available online at <http://www.cdfa.net>) (co-authored with CWRU law student Benjamin Cooper '10). This paper was also featured in the Spring 2011 edition of the Ohio Financing Roundtable quarterly newsletter, published by the Council of Development Finance Agencies.

Activities

Professor Rossman was appointed to the advisory council of Global Cleveland, a nonprofit organization which will launch an international welcome center in Cleveland.

MICHAEL SCHARF

JOHN DEAVER DRINKO-BAKER AND HOSTETLER PROFESSOR OF LAW AND DIRECTOR OF THE FREDERICK K. COX INTERNATIONAL LAW CENTER

Publications

Professor Scharf co-authored with ASIL Executive Director Elizabeth Andersen, The Cleveland Experts Meeting Report titled "Is Lawfare Worth Defining," published in 43 *Case Western Reserve Journal of International Law* 11-29 (2011).

The Career Services Office would like to thank alumni who participated in career-related events and workshops for students during the 2010-2011 academic year. Your continued support is greatly appreciated.

Atossa Alavi '02
Colleen Batcheler '98
David Carney '05
Michael Cosgrove '00
Bob Crump '68
Mary Davis '88
Meagan DeJohn '05
Nicole Deming '08
Matt Dolan '90
Tim Downing '88
Frank Ford '80
Bill Gagliano '80
David Galin '96

Afif Ghannoum '05
Justin Gould '07
Greg Guice '03
Matt Gurbach '03
Derek Harley '98
Andrean Horton '00
Rachael Israel '00
Ari Jaffe '86
Julie Juergens '96
Sal Kafiti '00
Eric Kinder '94
Melissa Laubenthal '04
Jeff Lazarus '05

Aura Lopez '04
Maria Makowiecki '04
Nancy Marcus '97
Dawn McFadden '02
Ahran Kang McKloskey '05
Deborah Michelson '87
Peter Morrison '09
Andrew November '09
Jane Pentilla '92
Steve Petras '79
Jenna Peyton '98
Robert Port '04
Dave Posteraro '81

Daniel Scharf '06
Christopher Schmitt '09
Melanie Shakarian '03
Thomas M. Skove '77
Jeff Smith '04
James Tarolli '91
Kimberly Textoris '08
Chris Tost '99
Matthew Vincel '08
David Watson '92
James Weikamp '09
Lori Welker '09
Seth Wolf '94

The late Professor Henry King's final book was organized and edited by Professor Scharf, titled "Henry T. King, Jr.: A Life Dedicated to International Justice," published in September 2011 by Carolina Academic Press. The book includes a Forward by Henry's son, best-selling novelist Dave King, and chapters by the Director of the Department of Justice Office of Special Investigations (Eli Rosenbaum) and by the founding Chief Prosecutor of the Special Court for Sierra Leone (David Crane). All proceeds from the sale of the book will go to the law school's Henry King Scholarship Fund.

Professor Scharf's book, co-edited by Gideon Boas and William Schabas, "International Criminal Justice: Essays on Legitimacy and Coherence," will be published in 2012 by Edward Elgar Publishers.

Presentations

Professor Scharf spoke on a panel entitled "Fighting Terror and the Rule of Law -- Constitutional and International Challenges," at the joint ABA and Israeli Bar Association Conference in Eilat, Israel on June 1, 2011.

Professor Scharf gave a workshop to the members of the Office of the Prosecutor of the Special Tribunal for Lebanon in The Hague, Netherlands on June 15, 2011.

Professor Scharf gave a public lecture titled "The Definition of Terrorism and the STL's Appellate Judgment," at the TMC Asser Institute, sponsored by the International Centre for Counter-Terrorism, in The Hague, Netherlands on June 15, 2011.

Professor Scharf gave a public lecture entitled "Universal Jurisdiction and the Crime of Terrorism" at the Grotius Centre in The Hague, Netherlands on June 21, 2011.

CALVIN WM. SHARPE

GALEN J. ROUSH PROFESSOR IN BUSINESS LAW AND REGULATION; DIRECTOR OF THE CENTER FOR THE INTERDISCIPLINARY STUDY OF CONFLICT AND DISPUTE RESOLUTION

Publications

UNDERSTANDING LABOR LAW, (third edition) (with Robert Strassfeld and Douglas Ray) (LexisNexis 2011).

TED STEINBERG

DAVEE DISTINGUISHED PROFESSOR OF HISTORY AND PROFESSOR OF LAW

Activities

Professor Steinberg was elected president of the Case Western Reserve University chapter of the American Association of University Professors.

ROBERT N. STRASSFELD

PROFESSOR OF LAW; ASSOCIATE DIRECTOR, FREDERICK K. COX INTERNATIONAL LAW CENTER; DIRECTOR, INSTITUTE FOR GLOBAL SECURITY LAW AND POLICY

Publications

"Foreword: Somebody's Watching Me: Surveillance and Privacy in an Age of National Insecurity," 42 *Case Wes. Res. J. Int'l. L.* 543 (with Cheryl Ough) (2010).

UNDERSTANDING LABOR LAW, (third edition) (with Douglas Ray and Calvin Wm. Sharpe) (LexisNexis 2011).

"Responses to Ten Questions" 37 *Journal of the National Security Forum* (Special issue of the *William Mitchell Law Review*) (forthcoming 2011) (invited symposium participant).

Presentations

Professor Strassfeld spoke on a panel entitled, "PhDs, MDs, and the DoDs: The Participation of Non-Military Professions in Torture, Interrogation, and Counter Insurgency Efforts" for the Inamori International Center for Ethics and Excellence, at the 2010 Peace and War Summit held at Case Western Reserve University on October 29, 2010.

Professor Strassfeld was a moderator on a panel entitled, "Ethical, Legal, and Professional Obligations of Lawyers Serving in the Military," for the Divided Loyalties Symposium at Case Western Reserve University School of Law on February 11, 2011.

Professor Strassfeld spoke on "Recent Developments in Labor and Employment Law," at the annual NLRB Region 8 Seminar, May 13, 2011.

ANNUAL FUND SCHOLARSHIPS

We need your help. By supporting the Annual Fund, your gift helps students in need of scholarships. Every gift, whatever the amount, counts. Visit giving.case.edu or call (800)

492-3308. Please mail checks (payable to CWRU) to the Office of Development and

Public Affairs, 11075 East Blvd, Cleveland, OH 44106.

FACULTY BRIEFS

MARTHA WOODMANSEE

PROFESSOR OF ENGLISH AND LAW

Publications

MAKING AND UNMAKING INTELLECTUAL PROPERTY: CREATIVE PRODUCTION IN LEGAL AND CULTURAL PERSPECTIVE (published by the University of Chicago Press). Co-edited with Mario Biagioli and Peter Jaszi, the book brings together papers presented at an interdisciplinary conference on "Con/text of Invention" that Professor Woodmansee organized at the law school in 2006.

"Publishers, Privateers, Pirates: Eighteenth-Century German Book Piracy Revisited," MAKING AND UNMAKING INTELLECTUAL PROPERTY, ed. Martha Woodmansee, Mario Biagioli, and Peter Jaszi (Chicago: University of Chicago Press, 2011).

Presentations

Professor Woodmansee spoke on "Intellectual Property and the Commerce in Ideas" in the CWRU Center for Policy Studies' Public Affairs Lecture Series on January 28, 2011.

Professor Woodmansee enjoined listeners to "Rip, mix, burn" in a panel discussion, organized by the Inamori Center for Ethics and Excellence at CWRU, on the "Ethics of Downloading Intellectual Property from the Internet" on February 11, 2011.

Professor Woodmansee delivered a plenary lecture on "Literary Franchises" at a day-long symposium April 2, 2011 devoted to "The Quote's the Thing: Negotiating Copyright in Scholarly Criticism" organized by the Baldy Center for Law and Social Policy at the State University of New York at Buffalo.

Professor Woodmansee presented a paper on "Fan Control in the Era of the Entertainment Franchise: The Case of Harry Potter" at the Third Annual Workshop of the International Society for the History and Theory of Intellectual Property held at Griffith University Law School, Brisbane, Australia, July 5-6, 2011.

Professor Woodmansee lectured on "Fan Control in the Era of the Entertainment Franchise" at a symposium on the Culture Industry in Legal Perspective at the University of New South Wales School of Law, Sydney, Australia on July 8, 2011.

Activities

This past spring semester, Professor Woodmansee supervised an interdisciplinary Arts & Sciences Dissertation Seminar, which she first developed with Andrew W. Mellon Foundation funding in 1996. Professor Kenneth Ledford co-supervised.

Professor Woodmansee worked to develop the interdisciplinary reach of the International Society for the History and Theory of Intellectual Property of which she is a co-founding director.

INTERNATIONAL LAW PROGRAM BY THE NUMBERS

4 Million Size of our international law endowment.

100 Students enrolled in our 1L International Law elective in 2011.

95 Prominent international law experts who spoke at the law school from 2010-2011.

71 Students who have interned at an international tribunal since 2003.

45 International law courses offered.

38 School of Law funded international internship placements for our students, Summer 2011.

15 National ranking of our International Law Program in 2011.

5 Times that our teams have won the Regional Jessup Rounds of the Jessup International Law Moot Court Competition since 2004, including the world championship in 2008.

1 Number of times our program has been nominated for the Nobel Peace Prize.

Expand Your Network by Connecting with Students

Alumni share opportunities
and benefits from the
School of Law's Career
Services Office

Three years after the bubble burst in our national economy, the legal industry is still adjusting to our changed economic times. And that means that career development and well-planned job searches are more important than ever to today's law students. An active alumni base can be one of the most critical and helpful resources to today's law student or new graduate.

Many of you may remember the stresses of the job search during your own time at CWRU. Perhaps there was an alumnus, alumna, or friend of the law school who offered you advice, eased your concerns, and helped provide you direction. The School of Law encourages all alumni and friends to "pay it forward" by getting involved in helping prepare today's law students for careers as outstanding legal professionals and the Career Services Office provides a wide variety of opportunities that require only as little or as much time as you are able to provide.

Why should you give back in this way? Eric Kinder '94, a Member at Spilman, Thomas & Battle in Charleston, West Virginia, sums it up best, "Just think back to your time in law school and ponder how helpful some real world insight would have been."



You Ask the Questions – Mock Interview Saturday

One of the most popular career programs is Mock Interview Saturday, which takes place on the last Saturday in January each year. This program is generally the first opportunity for first-year students to practice their skills in a simulated legal interview. The value our alumni and friends add to this program is evident in the wait list that forms every year.

Mock Interview Saturday is also a favorite for many of our participating attorneys. Jeff Lazarus '05, an Assistant Federal Defender with the Northern District of Ohio Federal Public Defender's Office and a frequent mock interviewer, says that he keeps coming back because "I enjoy seeing their raw talent.... It gives me an opportunity to help mold them to bolster their strengths and reduce their weaknesses.... [I]t allows alumni like myself to truly have an impact on their education and their careers." Eric Kinder adds that the practical education he can provide through mock interviews is not only rewarding to him but, he hopes, "enhances the reputation of the school by providing graduates better ready to help their employers."

In the past, Mock Interview Saturday was limited to those willing to make the trip back to campus for the event. But new web-based interview software available to students and alumni now makes mock interviews easier for everybody to participate in, regardless of location.

Case Connections

One of the most frequently-used resources offered by the Career Services Office is *Case Connections*, a database that alumni and friends of the law school can join to indicate their willingness to speak with students and other alumni about career-related topics. Students find tremendous value in the tips, insight, and referrals they receive from *Case Connections* contacts.

As Anne McNab '11, explains, "Despite the tough job market, alumni have been able to provide a great deal of insight on how to break into the legal market, as well as put me in contact with other individuals who are willing to provide advice." Fellow 2011 graduate Stephen Ellsesser adds, "Connecting with alumni has been very helpful, especially because I did not have family or other connections in the legal field before coming to law school."

One of the best things about *Case Connections* is that members have control over how involved and accessible they want to be as mentors to our students, and they can be involved no matter where they live. Julie Lady '02, a Compliance Officer with KeyCorp Risk Management Group, explains her reason for being a mentor in *Case Connections* in this way, "When I went to law school I knew very little about being a lawyer and nothing about networking. I enjoy the opportunity to share what I have learned with those who are students now."

Join *Case Connections* by registering at <http://law-case-csm.symplcity.com/mentors>.



In-Person Advice – Networking Receptions & Attorney Panels

The Career Services Office also provides over 40 career programs for our students every year, and many of these are panels, conference calls, and receptions involving alumni and friends of the school. The possibilities for alumni involvement in programs are virtually endless. Programs address practice areas, geographic locations, non-traditional job searches, social media in the job search, writing resumes and cover letters, and more. Programs are really the place for alumni to share advice on a topic that they are passionate about. As Julie Lady explains, "Participating in a CSO program is an easy way to give back to the law school and make an impact on the future of the legal profession."

Bringing Students Onboard – Job Postings and Interview Programs

Career and professional development are only one aspect of the law school experience. The end goal is, of course, to get a job when the rigors of law school and the bar exam are completed. Alumni and friends of the law school are encouraged to submit available opportunities for posting and to participate in the school's Fall and Spring Interview Programs. Participation is easy for employers across the country and around the globe – job postings can be submitted online, both our interview programs offer resume collect and direct send options, and our Fall Interview Program includes off-campus interviewing opportunities in New York City, Los Angeles, Chicago, Boston, and Washington, DC.

Connect in Other Ways – Social Media

The Career Services Office is also on Facebook, Twitter (@CWRULawCSO), and LinkedIn. Like us, follow us, and join our Group to further engage with students and fellow alumni. These forums can be vibrant places for sharing advice and resources with a minimal time commitment.

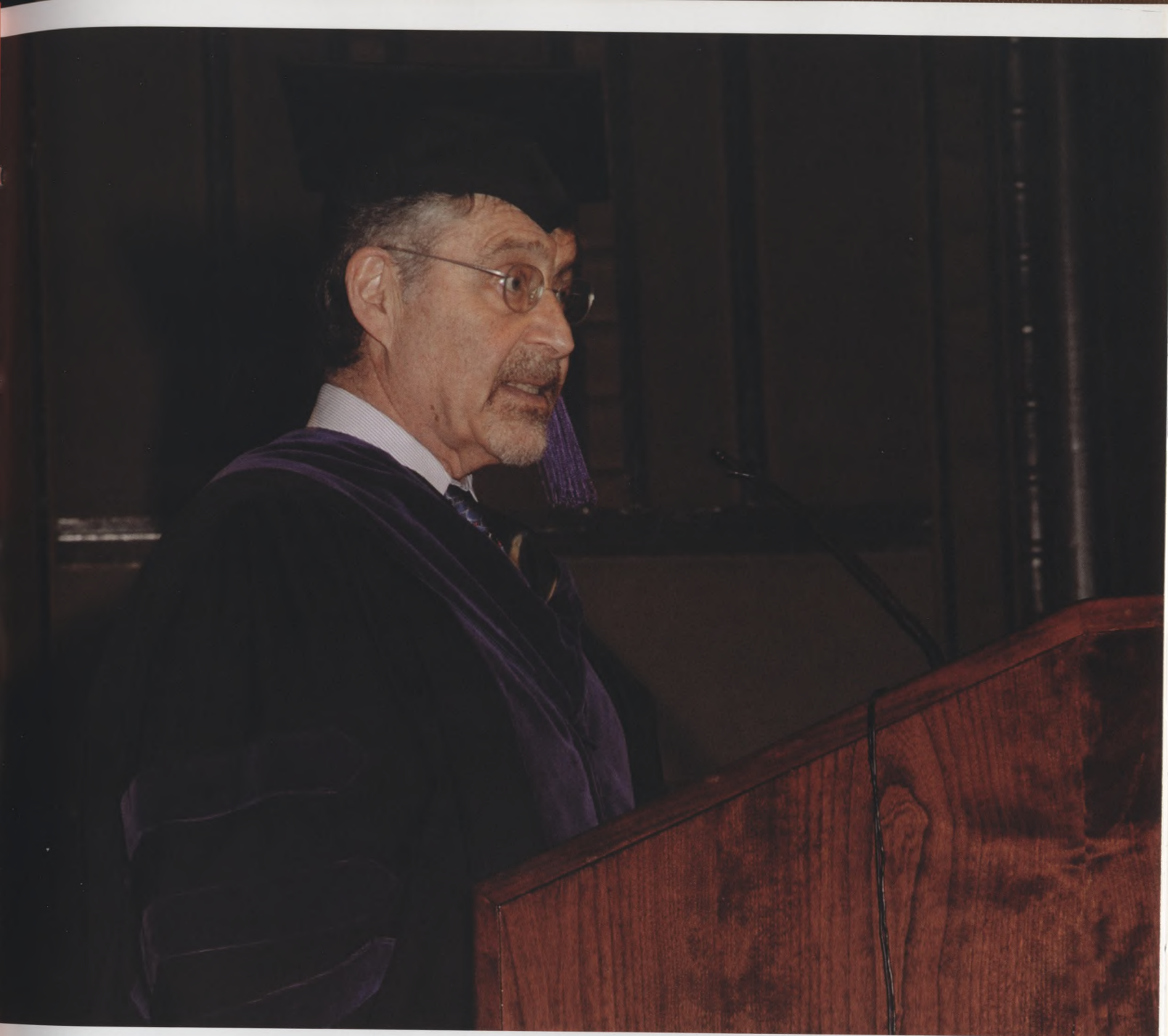
"Participating in a CSO program is an easy way to give back to the law school and make an impact on the future of the legal profession."



Convinced? Take the Next Step

Alumni and friends of the law school can get involved with the CSO and our students by sending an email to lawjobs@case.edu or calling our office at 216-368-6353.

And if you're still not sure about the value of supporting career programming, current 3L Daniel Cronin provides perhaps the most convincing reason, "Today's law students are tomorrow's referral source, associate, opposing counsel, or potential partner. Like any good sporting organization does, think long term by meeting and wrapping up the best talent when they are young!"



Warner Bros. CEO and alumnus, Barry Meyer, speaks to the 2011 graduating class

The School of Law was pleased to host Barry Meyer, one of the most highly respected leaders in his industry, as our 2011 speaker at the law school graduation ceremony. Mr. Meyer, a 1967 alumnus of the School of Law, became Chairman & CEO of Warner Bros. on October 4, 1999 after having served as the Studio's Executive Vice President & Chief Operating Officer since April 1994. Mr. Meyer joined the Company in 1971 as Director, Business Affairs for Warner Bros. Television, following two and a half years in both the legal and business affairs departments of the ABC Television Network.



Meyer oversees one of the most successful collections of entertainment brands in the world. Warner Bros., a Time Warner Company, is a global leader in all forms of entertainment and its related businesses across all current and emerging media platforms. Under his leadership, Warner Bros. has consistently ranked as one of the strongest, most profitable and best-positioned studios in the industry.

We were honored to welcome Barry Meyer back to the law school and congratulate our newest class of alumni! ■



Updates from Student Bar Association President, Jocelyn Hsiao '12

During my first two years at Case Western Reserve University, my law school experience has been incredibly rewarding. The Student Bar Association has provided countless events and opportunities to supplement our academic endeavors. As SBA President, I look forward to providing new ways to enrich our time here and to continue to address student concerns.

The SBA provides many activities for our students throughout the academic year. During finals week they host the biannual Midnight Breakfast, where senators bring pancakes and breakfast foods as a study break for weary students.

In addition to student events, we hope to further involve our dedicated faculty in our programs. In keeping with this goal, SBA and The Docket, our school paper, invited both students and faculty to our popular annual Wine and Cheese social, which provided a wonderful opportunity for students to meet with faculty outside of the classroom.

The SBA also reignited law student interaction with CWRU medical students at our brand new Medical Malpractice Mixer. We distributed colored wristbands to distinguish law students from medical students, and by the end of the evening, new friendships were formed. Based on the popularity of this event and the commonalities we share with other graduate students, SBA plans to involve other CWRU graduate programs in future events.

SBA has fostered growth by actively addressing suggestions and concerns. We recently donated a portion of the funds we raised through book sales to the University of Alabama School of Law Tornado Relief Fund, and we seek to continue our community service efforts in the fall. I look forward to being a part of our tradition of progress and engaging students and alumni in our thriving law school community.

Sincerely,
Jocelyn Hsiao
President, Student Bar Association
sbapresident@case.edu

Alumni Spotlight

ALUMNUS RICHARD VERHEIJ MAKES SIGNIFICANT CONTRIBUTION TO THE LAW SCHOOL THROUGH NEW ENDOWED CHAIR

One of the largest contributors to the law school's Annual Fund, Richard Verheij '83 has remained extremely dedicated to the law school. His most recent gift for an endowed professorship exemplifies his deep commitment.

THIS GIFT WILL
GREATLY ENHANCE
THE SCHOLARLY
WORK AT THE
SCHOOL OF LAW
AND WE ARE TRULY
THANKFUL FOR THIS
TRANSFORMATIVE
GIFT.

The professorship is in honor of his father, the late Johan Verheij, and will be held by Jonathan Adler, director of the Center for Business Law and Regulation, who specializes in environmental, administrative, and constitutional law.

When asked why he decided to endow this chair in his father's name, Verheij stated, "The law school and its great faculty provided me with a solid foundation for establishing what has been in many ways a rewarding career which has spanned challenging areas from tobacco litigation and regulation to cutting edge environmental compliance. I believe in the ethic that to those whom much is given, much is expected. Support of the law school has been and continues to be my way of honoring that expectation."

Professor Adler is a widely renowned scholar most known for his work in environmental law. He was identified as the most cited legal academic in environmental law under age 40, and his recent article, "Money or Nothing: The Adverse Environmental Consequences of Uncompensated Land-Use Controls," published in the *Boston College Law Review*, was selected as one of the ten best articles in land use and environmental law.

"It's a tremendous honor to be named as the inaugural holder of this chair. As a school we are tremendously grateful for Mr. Verheij's generosity and longstanding support of the school and our work," said Adler. ■

Working for the Special Tribunal for Lebanon

Alumnus Christopher Rassi '03 shares his experiences working for the tribunal and how the international law program helped him achieve success

The Special Tribunal for Lebanon (STL) is one of the most exciting and innovative institutions to be created in the newly developing system of international justice. The STL was formed at the request of the Lebanese government to the United Nations in response to the 2005 attack resulting in the death of former Lebanese Prime Minister Rafik Hariri. For the past year, I have had the unique opportunity to serve as legal adviser to the Prosecutor for the STL. It has been a rewarding and thrilling journey to get to this point in my career, and I am grateful to Case Western Reserve University School of Law for providing not only a solid foundation for me to develop as a lawyer, but also a platform to tackle important issues for various international courts.



Case Western Reserve University and My Early Career

I have been fortunate to have several opportunities for collaboration with the School of Law's exemplary international law faculty over the years. In law school, I took the War Crimes Research Lab course, and I was tasked with working on a research memorandum for the International Criminal Tribunal for Rwanda (ICTR). It was a rewarding experience in a legal clinic, whose framework has served as a model to other law schools throughout North America. Today, the lab course continues to make important contributions to international criminal justice by assisting the Prosecution, Chambers, Defense, and Registry at various tribunals. Since graduation, I worked with Thompson Hine LLP in Washington, DC and Cleveland, and have developed extensive academic experience in the field of international criminal and humanitarian law by serving as Adjunct Professor of Law in the War Crimes Research Lab, where students under my supervision provide legal advice to international courts and organizations. I have also taught a course on Atrocity Law at the Case Abroad at Home Program.

My introduction to international criminal tribunals as a student spurred me to seek a Cox Center Post Graduation Fellowship, pursuant to which I was able to serve as a law clerk in the Appeals Chamber of the International Criminal Tribunals for the former Yugoslavia and Rwanda. Later, I returned to the ICTR in Arusha, Tanzania to serve as Associate Legal Officer to Judge Inés Mónica Weinberg de Roca (Argentina) in Chambers and Special Assistant to Judge Sir Charles Michael Dennis Byron (Saint Kitts and Nevis), the President. My time at the School of Law equipped me to get, and excel in, these positions.

The Importance of the Special Tribunal for Lebanon

On December 13, 2005, the Government of the Republic of Lebanon requested the United Nations to establish a tribunal of an international character to try those allegedly responsible for the attack February 14, 2005 in Beirut that resulted in the death of Mr. Hariri and in the death or injury of other persons. Pursuant to Security Council Resolution 1664 (2006), the UN and Lebanon negotiated an agreement to establish the STL. The provisions of the agreement and the Statute of the STL were incorporated by reference and annexed to Security Council Resolution 1757 (2007), which decided that such provisions would enter into force on June 10, 2007. The Office of the Prosecutor (OTP) is, along with the Chambers, the Registry, and the Defense Office, one of the four organs of the STL, which opened in 2009.

Over the course of 2011, the STL's Pre-Trial Judge was seized with an indictment—filed under seal by the Prosecutor, which the Pre-Trial Judge confirmed on June 28, 2011. The Judge, satisfied that the evidence was sufficient to support all the charges, after applying a *prima facie* standard, confirmed all charges in the indictment. Decisions to indict are made based on the credible evidence available and exclude political or any other external considerations. Under an innovative Rule of the STL, the Pre-Trial Judge may pose preliminary questions to the Appeals Chamber regarding the applicable law that he deems necessary in order to examine and rule on the indictment.



The OTP is headed by the Prosecutor, Daniel A. Bellemare, from Canada. He was appointed by the Secretary-General of the United Nations on November 14, 2007, after consultation with Lebanon and the UN Security Council. The Prosecutor acts independently and does not seek or receive instructions from any government or from any other source.

The role of the Prosecutor is two-fold: to investigate crimes falling within the jurisdiction of the STL and to present cases at trial and on appeal, if necessary. The Prosecutor has continued the investigation carried out by the UN International Independent Investigation Commission, which was established by the UN Security Council and assisted the Lebanese authorities in their investigations from 2005 to 2009.

As legal adviser, I provide legal advice on all aspects of the OTP's work such as issues of public international law, international criminal law and domestic laws as they affect the work of the OTP, as well as on issues related to cooperation with the STL.

The STL's jurisdiction includes three categories of cases: (1) the attack against Mr. Hariri; (2) other attacks that occurred in Lebanon between October 1, 2004 and December 12, 2005, if those attacks are found by a Judge to be connected and similar in nature and gravity to the attack against Mr. Hariri; and (3) other attacks that occurred in Lebanon after December 12, 2005, if also found to be connected and similar, but subject to a mutual agreement by Lebanon and the UN, and with the approval of the Security Council.

The OTP is organized on the basis of multi-disciplinary teams with staff (e.g., police officers, forensic experts, analysts, lawyers) hailing from 35 countries, and working in offices in Leidschendam (just outside The Hague), The Netherlands, and Beirut. Investigation tasks often include obtaining statements from witnesses, collecting evidence, and conducting onsite investigations. In carrying out these tasks, the Prosecutor works in cooperation with the relevant Lebanese authorities as is appropriate.

One unique feature of the STL is that the applicable substantive law is national in character, as the Statute stipulates that the STL shall apply provisions of the Lebanese Criminal Code relating to the prosecution and punishment of acts of terrorism and crimes and offences against life and personal integrity, among others. Though Lebanese law would authorize the application of the death penalty for such offences, the STL may impose only prison sentences. In a precedent-setting decision on February 16, 2011, the STL's Appeals Chamber issued a decision on the applicable law, including a definition of the crime of terrorism applicable before the STL.

The STL has a mixed composition with the participation of Lebanese and international judges, the latter retaining a majority. The STL's standards of justice, including principles of due process, are based on the highest international standards of criminal justice as applied in other international tribunals. The establishment of a tribunal of an international character was aimed at ensuring the independence, objectivity, and impartiality of the entire judicial process. As at the International Criminal Court and Extraordinary Chambers in the Courts of Cambodia, the STL's Statute includes provisions on the rights of the victims to present their views and concerns as deemed appropriate by the court. Fifty-one percent of the costs of the STL are borne by voluntary contributions from States, while Lebanon finances the remaining forty-nine percent. More information on the STL can be found at <http://www.stl-tsl.org> ■

Written by: Christopher M. Rassi, JD (2003), MBA (2003), MA (2000), BA (2000)

The views expressed herein are those of the author and do not necessarily reflect the views of the STL.

ALUMNI CLASS NOTES

1961

MILESTONE REUNION

1967

Richard V. Levin

became a member of the Copley-Fairlawn City Schools Board of Education.

1971

Timothy T. Reid

joined the Cleveland firm Mansour, Gavin, Gerlack & Manos Co., LPA's Civil Litigation Group, specializing in corporate, insurance and political

subdivision representation.

1973

James M. Petro was chosen by Governor Kasich as Ohio's higher education Chancellor.

Miles J. Zaremski

was quoted in the Bloomberg News article, "Health-Care Law Must Stand, U.S. Says in Third Appeal Argument" on the various appeals that involve the

constitutional challenge to "Obamacare."

1976

Lee I. Fisher was named President and CEO of CEOs for Cities, a national

organization aimed at facilitating economic development in urban areas.

Case Connections

The Career Services Office invites you to serve as a networking contact in *Case Connections*! *Case Connections* is a database maintained by the Career Services Office, which serves to connect current students with practitioners and other JDs. Students are able to identify and connect with contacts in their preferred practice area or geographic location, which has proven to be

an invaluable networking resource. *Case Connections* contacts have always provided our students with great career advice – we hope you will consider being a part of this program! To participate, please register at <https://law-case-csm.symplicity.com/mentors/>. Direct questions to lawjobs@case.edu or 216-368-6353.

1987

Catherine M. Kilbane

Senior Vice President, General Counsel and Secretary of American Greetings Corporation, became a new member to the University Hospitals Board of Directors.

1990

J. Timothy McDonald

joined Thompson Hine LLP as a Partner in the firm's Labor & Employment practice group in its Atlanta office.

1991

Robert M. Loesch

joined the law firm of Tucker Ellis & West LLP as a Partner in the firm's Business Department in the Cleveland office.

1992

George M. Callard

was named Senior Vice President of Legal and Business Affairs for The Weather Channel Companies.

1993

Ann E. Knuth joined

the Cleveland firm Mansour, Gavin, Gerlack & Manos Co., LPA's Labor and Employment Group.

1994

Jeffrey S. Newman

joined Thompson Coburn's Washington, DC, office as a Partner in the Government Contracts practice.

1995

Richard L. Dana

became a member of University Hospitals Geneva Medical Center Board.

Are you on LinkedIn?

Stay connected with classmates and colleagues, seek and share referrals and information, and keep current on programs and news from the law school by joining the CWRU School of Law Group on LinkedIn. We currently have over 1,200 members; help us hit 2,000 by 2012!

Politics, and Policy.

Klem, a former staff attorney for the American Bar Association Commission on Law and Aging in Washington, DC, is now living in Portland, OR and working as the General Counsel for Smarsh, a software company specializing in email archiving solutions for message compliance

and records retention, proactive litigation readiness, and mail server data management.

2006

Jessica Benson Cox

joined the Product Liability group at Baker & Daniels LLP as an associate in the firm's downtown Indianapolis office.

2007

Christopher Y. Chan

an Associate at Finnegan, Henderson, Farabow, Garrett & Dunner, LLP in Washington, DC, was elected as President-Elect of the Asian Pacific American Bar Association of DC (APABA-DC).

2008

Kiel A. Bowen joined the firm of Moore & Van Allen as an

Associate in the Financial Services practice group in the Charlotte, NC office.

Jamie L. Price joined the firm Gallagher Sharp's Cleveland office.

Kimberley A. Textoris

joined the law firm of Calfee, Halter & Griswold LLP as an Associate in the Intellectual Property group.

John C. Weber an

attorney in the Cleveland office of Ulmer & Berne LLP, was appointed chair of the Volunteer Lawyers for the Arts Committee of the Cleveland Metropolitan Bar Association (CMBA).

2009

Julie A. Hein joined the firm Freund, Freeze & Arnold as an Associate in the Cincinnati, OH office.

2010

David A. Biemel

became the Director of Regulatory and Governmental Affairs for the Ohio Petroleum Marketers & Convenience Store Association (OPMCA).

ALUMNI CLASS NOTES

1977

Peter A. Joy Vice Dean and Co-Director of the Criminal Justice Clinic at Washington University School of Law, was installed as the Henry Hitchcock Professor of Law on March 22, 2011.

1978

Douglas J. Gordon joined Ulmer & Berne LLP as a Cleveland-based associate in the Intellectual Property & Technology Practice.

Michael N. Oser published multiple articles concerning issues dealing with children and the Power of Attorney

with respect to grandparents. He is in his 32nd year of being a sole practitioner in Columbus, OH. Classmate, Jefferson E. Liston proofed the articles.

1979

Joseph M. Sellers argued *Wal-Mart v. Dukes* before the Supreme Court of the

United States. Sellers represented the Plaintiffs.

1980

Martin R. Hoke was one of seven people appointed by Governor Kasich to the Ohio Casino Control Commission.

Jay Shapiro joined White and Williams in New York City as a Partner in the Commercial Litigation Department.

1981

Honorable Mary Jane Trapp Judge of the Ohio 11th District Court of Appeals, received the Ohio Legal Assistance

Foundation's 2011 Presidential Award for Outstanding Leadership in the Delivery of Pro Bono Legal Service.

1983

John J. McConnell, Jr. was confirmed by the United States Senate as a judge on the United States District Court for the District of Rhode Island. He

William Bradford Longbrake a Partner in the Akron, OH office of Reminger Co., was selected by the Burton Awards for Legal Achievement among the "Best Law Firm Writers of 2011." His article, "Zippo and Internet Activity: The New Language of Personal Jurisdiction?" was published in DRI's For the Defense, Spring

2010. The article was co-authored by fellow School of Law alum, Laurie J. Avery (LAW '97). Longbrake is also Chairman of the Community Parade Committee for the Pro Football Hall of Fame Enshrinement Festival.

T. Anthony (Tony) Swafford Chair of Miller & Martin PLLC's Transportation & Logistics group in Nashville, TN, was elected to the Executive Committee of Transportation Lawyers Association (TLA).

1996

Angela Thi Bennett President of Ziva Development Ltd.,

was appointed to the Ohio Board of Education by Governor Kasich.

John A. Eastwood a Partner at Eiger Law who manages the firm's Greater China IP practice from their offices in Taipei and Shanghai, was listed in Asia Law Leading Lawyers list of the Asia region's preeminent lawyers for the Intellectual

Property practice group. Eastwood was also elected International Counsel for the Democrats Party Committee Abroad. In this role, he serves on the Executive Committee organization with members in more than 50 nations and assists with counseling and compliance efforts around the globe.

Julie E. Firestone joined the Cleveland firm Mansour, Gavin, Gerlack & Manos Co., LPA's Business and Tax Services Group.

1997

Laurie J. Avery a Managing Partner of Reminger Co.'s Toledo, OH office was selected by the Burton Awards for Legal Achievement among the "Best Law Firm Writers of

SCHOOL OF LAW EVENTS

October 13-16, 2011 – Alumni Weekend

We will celebrate with an all-alumni reception, as well as reunion dinners honoring classes ending in 1's and 6's. Come celebrate with alumni and fellow classmates!

Here are just a few events to look forward to during Alumni Weekend:

Friday, October 14, 3:00 to 5:00 p.m. – Cleveland Museum of Art

Think Forum: The Center for Law, Technology and the Arts, Cleveland Museum of Art and the Art History Department at Case Western Reserve University present - *"Antiquities, Museums, and Cultural Patrimony - Law, Morality, and the Declining Vitality of 'Finder's Keeper's, Loser's Weepers,'" (1-hour CLE credit for Ohio attorneys) (pending approval).*

Speaker: Michael J. Horvitz, Chairman of the Board, Cleveland Museum of Art. This lecture will explore the varying concepts of "property" and "ownership" in different jurisdictions and under different legal systems, particularly as they apply to cultural patrimony and other artifacts that are excavated.

ALUMNI CLASS NOTES

was nominated by President Barack Obama.

1984

Richard S. Mitchell a Partner in Roetzel & Andress' Cleveland

office was recognized as a "BTI Client Service All-Star" in Commercial Litigation by corporate counsel clients. A total of only 318 attorneys

nationwide received this honor in 2011.

William R. Weir was ranked among the top attorneys in Ohio in the Real Estate practice area by

Chambers USA®, a leading guide to business law firms and lawyers. Weir is a partner in Porter Wright's Cleveland office.

1985

Ruth D. Kahn a Partner in Steptoe & Johnston LLP's Los Angeles office, was named to the Daily Journal's list of Top 75 Women Litigators

in California for the fifth time since 2006.

1986

MILESTONE REUNION

Donald E. Lampert senior counsel in the Workers' Compensation group at Calfee, Halter & Griswold LLP, was inducted as a Fellow of the College of Workers' Compensation Lawyers.

Inese A. Neiders her presentation, "Jury Selection and Case Themes in Scientific Evidence Cases" was presented to the Nebraska Criminal Defense Attorneys Association.

Advertise your opportunity to current students and alumni, either through our password-protected CSOnline (<http://law-case-csm.symplicity.com/employers>) or through the CWRU School of Law Group on LinkedIn. Postings are free. Email lawjobpostings@case.edu or call 216-368-6353 with questions.

IS YOUR ORGANIZATION HIRING?

2011." Her article, "Zippo and Internet Activity: The New Language of Personal Jurisdiction?" was published in DRI's For the Defense, Spring 2010. The article was co-authored by fellow School of Law alum, William Bradford Longbrake (LAW '95).

Rhonda Baker Debevec was selected to serve as a representative at-large for the Ohio Association of Justice. She is serving on the 2011-2012 Board of Trustees.

1998

Peter L. Blacklock joined Fox Rothschild LLP as Partner in the Real Estate and Intellectual Property Departments in the

firm's West Palm Beach office.

Richik Sarkar a Partner in the Litigation Practice of Ulmer & Berne LLP, was appointed as a Trustee of the Cuyahoga County Community Improvement Corporation, an organization committed to advancing, encouraging and

promoting industrial, economic, commercial and civic development in Cuyahoga County.

2001

MILESTONE REUNION

Jacob L. Hafter represented a Plaintiff who won an \$8.8 million jury verdict in federal court. The case involved a physician whose hospital privileges were revoked

without proper due process, destroying his career. Hafter also represented a physician in a battle over physician rights in a case he won before the 9th Circuit Court of Appeals.

2002

Dorian L. Eden joined Phoenix, AZ divorce law firm, Law Offices of Scott David Stewart, PLLC, as Of Counsel.

2004

Ellen M. (VanCleave) Klem co-authored, "Bringing the Vote to Residents of Long-Term Care Facilities: A Study of the Benefits and Challenges of Mobile Polling." The publication appears in the March 2011 volume of the Election Law Journal: Rules,

Saturday, October 15, 10:30 a.m. to 12:00 p.m.
School of Law (Moot Courtroom (A59))

"Moving Forward: Positioning Cuyahoga County for Recovery"

(1.5 hours of CLE credit to lawyers who attend)

Presented by Case Western Reserve University School of Law, this moderated panel features: Ann Rowland (LAW '76), Assistant U.S. Attorney; Judith Rawson (LAW '76), Former Mayor of Shaker Heights, OH; Robert McCreary, III (LAW '76), Founder and Chairman, CapitalWorks, LLC; Professor Kenneth Margolis (LAW '76), Director of the CaseArc Integrated Lawyering Skills Program and Co-Director, Milton A. Kramer Law Clinic Center (moderator).

Please visit law.case.edu/reunion for more information and to register.

Alumni & Faculty Luncheon

November 18, 2011, 11:30 a.m. – 1:15 p.m.

Renaissance Cleveland Hotel

This annual luncheon honors alumni, faculty and friends for their dedication to the law school and the legal profession. Recipients of the Law Alumni Association Awards are honored, and the election of new board members takes place.

LETTER FROM PAUL MARCELA '81, LAW ALUMNI ASSOCIATION BOARD PRESIDENT

I am happy to report that the Law Alumni Association Board has had another active year since the Annual Alumni & Faculty Luncheon last November in Cleveland. Soon, it will be time for us to reconvene at the 2011 Luncheon.

The LAAB has conducted three active and productive in person meetings in Cleveland — in November, April and September. Interim Dean Rawson and the School of Law's associate and assistant deans were very helpful to the LAAB. We are looking forward to enjoying the same level of active engagement by Dean Lawrence Mitchell, and his administrative team in support of the law school's alumni association and its governing board.

I once again had the pleasure of representing the School of Law's alumni at the Commencement ceremony last May. I provided insights to the Class of 2011 about the professional path ahead of them in difficult economic times and encouraged them to pursue their professional dreams and passions with patience and perseverance in the difficult days ahead. I also invited them to participate in Law Alumni Association activities in the future. It was a pleasure to witness the energy and enthusiasm of a new class of School of Law graduates even as they begin their careers during a time of continuing economic uncertainty.

I would like to encourage you to attend the law school's annual Alumni & Faculty Luncheon, which will take place on November 18, 2011 at the Renaissance Hotel in Cleveland. At the luncheon, annual awards will be presented, the faculty and alumni of the law school will celebrate key accomplishments and new officers and board members will be elected and installed. This is always an enjoyable event that capstones an active and productive year for the School of Law and the Law Alumni Association. I hope to see you there!

Very truly yours,
Paul A. Marcela '81
President
Law Alumni Association

LAW ALUMNI ASSOCIATION BOARD

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Renee L. Snow '97

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Alan H. Weinberg '74 *

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Mara E. Cushwa '90

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Alan H. Weinberg '74 *

Sara Busch Whetzel '06

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Alan E. Yanowitz '85

**Ex-officio*

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LAURA J. AVERY '97

BRENT D. BALLARD '85 *

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HAROLD "KIP" READER '74 *

HEWITT B. SHAW, JR. '80 *

PETER R. SIEGEL '93

HILARY TAYLOR

RALPH S. TYLER '75

RICHARD H. VERHEIJ '83

DAVID S. WEIL, JR. '70

WILLIAM N. WEST '67

**Executive Committee Members*

The annual Lecture Series at the law school brings to Cleveland some of the world's most sought-after speakers and authors who share their expertise on a variety of topics. All events are free and open to the public (CLE fees as noted). Events will be webcast live and available afterwards for viewing on demand.

Sept 9, 2011

8:30 a.m. – 5:15 p.m., Moot Courtroom (A59)

War Crimes Research Symposium

presented by the Frederick K. Cox

International Law Center

"International Law in Crisis"

Featuring over 30 panelists including:

Hon. Richard Goldstone, former Justice,

South African Constitutional Court.

Registration required for all attendees.

7.0 hours CLE credit available for a \$200 fee

(School of Law alumni pay \$100). *Lunch provided to all registered attendees.*

Sept 12, 2011

4:30-6:00 p.m., Moot Courtroom (A59)

Frederick K. Cox International Law Center & the Institute for Global Security Law and Policy present

"9/11: A Ten Year Retrospective on Law and the War on Terrorism"

Speakers: Brigadier General Gill P. Beck,

Commander, U.S. Army Reserve Legal

Command, Gaithersburg, Maryland;

Professor Avidan Y. Cover, Case Western

Reserve University School of Law; Professor

Shannon E. French, PhD, Case Western

Reserve University; Justin Herdman,

Assistant U.S. Attorney Northern District of

Ohio; and Dennis Terez, Federal Public

Defender, Northern District of Ohio.

1.5 hr. free CLE credit available. *Reception follows.*

Sept 14, 2011

8:30 – 9:45 a.m., The City Club of Cleveland

Case Downtown – First in a monthly series*

"The 1st Amendment as a Mask for Privilege? *Citizens United*, Grand Theft Auto and Other Recent Developments"

Speaker: Professor Jonathan L. Entin, Case Western Reserve University School of Law

*Lectures will take place on:

Fall 2011: September 14, October 26,

November 16, December 14

Spring 2012: January 11, February 8, March

14, April 11, May 9, June 13

1 hr. free CLE credit available, pending approval.

Breakfast preceding lecture.

Note: Event takes place away from the law school: The City Club of Cleveland, 850 Euclid Ave., 2nd floor, Cleveland, Ohio 44114

Sept 23, 2011

Daylong, Moot Courtroom (A59)

Arthur W. Fiske Memorial Lecture presents

"The University and National Security after 9/11"

A daylong symposium cosponsored by the

Institute for Global Security Law and Policy.

Registration required for all attendees.

1.5 hrs. free CLE credit available, pending

approval (legal panel only). *Reception follows.*

Oct 6, 2011

6:00 – 7:00 p.m., Ford Auditorium, Allen

Memorial Medical Library

Frank J. Battisti Memorial Lecture

"The Road to Justice"

Speaker: Fred D. Gray, Gray, Langford, Sapp,

McGowan, Gray & Nathanson.

1 hr. free CLE credit available, pending approval.

Reception follows.

Note: Event takes place away from the law

school: Ford Auditorium, Allen Memorial Medical Library, 11000 Euclid Avenue, Cleveland OH

Oct 11, 2011

4:30 – 5:30 p.m., Moot Courtroom (A59)

Ben C. Green Lecture presented by the

Institute for Global Security Law and Policy

"War ■ Time: An Idea, Its History, Its Consequences"

Speaker: Mary L. Dudziak, Judge Edward J.

and Ruey L. Guirado Professor of Law,

History and Political Science, University of

Southern California.

1 hr. free CLE credit available. *Reception follows.*

Oct 12, 2011

Noon – 1:00 p.m., Moot Courtroom (A59)

Elena and Miles Zaremski Law-Medicine

Forum presented by the Law-Medicine Center

"Medical Malpractice Cases: Considering the Legal and Medical Points of View"

Speaker: George Moscarino, Founding

Partner, Moscarino and Treu LLP.

1 hr. free CLE credit available, pending approval.

Lunch follows.

Oct 14, 2011

3:00 – 5:00 p.m., Cleveland Museum of Art

An Alumni Weekend "Think Forum"

presented by the Center for Law, Technology, and the Arts at Case Western Reserve

University School of Law; Cleveland Museum

of Art; and the Art History Department at Case Western Reserve University

"Antiquities, Museums and Cultural Patrimony – Law, Morality and the Declining Vitality of 'Finder's Keepers, Loser's Weepers'"

Speaker: Michael J. Horvitz, Chairman of the Board, Cleveland Museum of Art.

1 hr. free CLE credit available. *Talk and gallery tour open to law alumni only; space is limited.*

Alumni registration (required) online: <http://www.cwru.edu/alumni/weekend/registration.html> or call: 216.368.6354

Oct 15, 2011

10:30 a.m. – 12:00 Noon,

Moot Courtroom (A59)

An Alumni Weekend Panel

"Moving Forward: Positioning Cuyahoga County for Recovery"

Speakers: Ann Rowland, Assistant U.S.

Attorney, U.S. Attorney's Office for the

Northern District of Ohio; Judith Rawson,

Former Mayor of Shaker Heights, Ohio;

Robert McCreary III, Founder and Chairman, CapitalWorks.

1.5 hrs. free CLE credit available.

Dean's Breakfast 9:30-10:30 a.m.; Standing lunch reception Noon-1:00 p.m.; Ground Floor Rotunda

Oct 17, 2011

4:30 – 5:30 p.m., Moot Courtroom (A59)

Sumner Canary Lecture presented by the Center for Business Law and Regulation

"Saving Elections from Politics: A Doctrine of Separation of Campaign and State"

Speaker: Professor Bradley A. Smith, Capital University.

1 hr. free CLE credit available. *Reception follows.*

Oct 19, 2011

4:30 – 5:30 p.m., Moot Courtroom (A59)

CISCDR Distinguished Visiting Practitioner Lecture presented by the Center for the

Interdisciplinary Study of Conflict and

Dispute Resolution (CISCDR) presents

"Making International Arbitration Suitable for the 21st Century"

Speaker: David W. Rivkin, Debevoise & Plimpton LLC.

1 hr. free CLE credit available. *Reception follows.*

Nov 3, 2011

4:30 – 5:30 p.m., Moot Courtroom (A59)

Oliver C. Schroeder, Jr. Scholar-in-Residence

Lecture presented by the Law-Medicine Center

"The Goals of FDA Regulation and the Challenges of Meeting Them"

Speaker: Ralph Tyler, former Chief Counsel, Food and Drug Administration.

1 hr. free CLE credit available. *Reception follows.*

Nov 4, 2011

9:00 a.m. – 4:15 p.m., Moot Courtroom (A59)

Law Review Symposium

"Baker v. Carr after 50 Years:

Appraising the Reapportionment Revolution"

Featuring: Professor Samuel Issacharoff, New York University School of Law.

Registration required for all attendees. CLE credit available, pending approval, for a \$200 fee (School of Law alumni pay \$100). *Lunch provided to all registered attendees.*

Nov 7, 2011

4:30 – 5:30 p.m., Moot Courtroom (A59)

CISCDR Distinguished Visiting Scholar

Lecture, presented by the Center for the Interdisciplinary Study of Conflict and Dispute Resolution

"The Evolution of Transformative Mediation: From Practice to Theory to Practice"

Speaker: Professor Robert Baruch Bush, Hofstra University School of Law.

1 hr. free CLE credit available. *Reception follows.*

Nov 15, 2011

4:30 – 5:30 p.m., Moot Courtroom (A59)

Distinguished Lecture in Law, Technology & the Arts presented by the Center for Law, Technology & the Arts

"Intellectual Property as a Business Model"

Speaker: Laura Quatela, General Counsel, Chief IP Officer and Senior VP, Eastman Kodak Co.

1 hr. free CLE credit available, pending approval. *Reception follows.*

Nov 21, 2011

4:30 – 5:30 p.m., Moot Courtroom (A59)

Klatsky Seminar in Human Rights presented by the Frederick K. Cox International Law Center

"Victims before International Criminal Courts: A Challenge for International Criminal Justice"

Speaker: Hon. Christine Van den Wyngaert, Judge, International Criminal Court.

1 hr. free CLE credit available. *Reception follows.*

Feb 8, 2012

Noon – 1:00 p.m., Moot Courtroom (A59),

NOT a CLE event

Elena and Miles Zaremski Law-Medicine

Forum presented by the Law-Medicine Center

"Why the Democrats Passed an Unpopular Health Care Reform"

Speaker: Professor Joseph White, Political Science, Case Western Reserve University. *Lunch provided.*

Feb 24, 2012

9:00 a.m. – 3:45 p.m., Moot Courtroom (A59)

The LTA Symposium presented by the

Center for Law, Technology, and the Arts

"Non-Practicing Entities and Their Role in the Modern Patent System"

Registration required for all attendees: 5.0 hrs. CLE credit available, pending approval, for a \$200 fee (School of Law alumni pay \$100). *Lunch provided to all registered attendees.*

Mar 20, 2012

11:30 a.m. – 1:30 p.m., The City Club of Cleveland

Lecture on Global Justice presented by

Frederick K. Cox International Law Center cosponsored by the Greater Cleveland International Lawyers Group (GCILG).

"The Reach and Grasp of International Criminal Justice"

Speaker: Stephen Rapp, U.S. Ambassador for War Crimes Issues, U.S. Department of State.

1 hr. free CLE credit available, pending approval. Attorney registration required by 3.10.11 through GCILG. Contact Kathleen Jablonski, Kjablonski@bakerlaw.com (Fee for lunch preceding lecture: \$25– members, \$30– non-members, \$10– students).

NOTE: *Event takes place away from the law school: The City Club of Cleveland, 850 Euclid Ave., 2nd floor, Cleveland OH 44114*

Mar 22-23, 2012

Multi-day symposium, Moot Courtroom (A59)

Henry T. King, Jr. Annual Conference on

Canada-United States Relations presented by the Canada-U.S. Law Institute at Case Western Reserve University School of Law. Open to the public, for a fee. CLE credit available, for a fee, pending approval. Registration required for all attendees.

Mar 28, 2012

4:30 – 5:30 p.m., Moot Courtroom (A59)

Rush McKnight Labor Law Lecture

presented by the Center for the Interdisciplinary Study of Conflict and Dispute Resolution

"The Assault on Collective Bargaining Rights in the Public Sector"

Speaker: Professor Joseph E. Slater, University of Toledo College of Law.

1 hr. free CLE credit available. *Reception follows*

Apr 3, 2012

4:30 – 5:30 p.m., Moot Courtroom (A59)

Norman A. Sugarman Tax Scholar-in-

Residence presented by the Center for Business Law and Regulation

"Taxing Families: The Troubling Disconnect Between State and Federal Law"

Speaker: Professor Patricia Cain, University of Iowa.

1 hr. free CLE credit available. *Reception follows*

Apr 5, 2012

4:30 – 5:30 p.m., Moot Courtroom (A59)

CISCDR Distinguished Interdisciplinary

Lecture, presented by the Center for the Interdisciplinary Study of Conflict and Dispute Resolution

"How Rejection Affects People"

Speaker: Roy Baumeister, PhD, Professor of Psychology, Florida State University

1 hr. free CLE credit available, pending approval.

Reception follows

Apr 13-14, 2012

multiday symposium, Moot Courtroom (A59)

Law-Medicine Symposium presented by the Law-Medicine Center

"Women and Prenatal Genetic Testing"

Registration required for all attendees: CLE credit available, pending approval, for a \$200 fee (School of Law alumni pay \$100). *Lunch provided to all registered attendees.*

Apr 16, 2012

4:30 – 5:30 p.m., Moot Courtroom (A59)

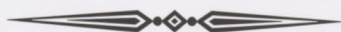
Arthur W. Fiske Memorial Lecture

presented by the Center for Business Law and Regulation

Speaker: Troy A. Paredes, Commissioner, Securities and Exchange Commission.

1 hr. free CLE credit available, pending approval. *Reception follows.*

In Memoriam



In Memoriam includes names of deceased alumni forwarded to Case Western Reserve University School of Law in recent months.

Geraldine Stibbe Johnson FSM '39, LAW '41
David Richard Wilson LAW '43
Robert J. Felixson ADL '41, LAW '43
William Anthony Gemma LAW '45
John T. Mellion LAW '47
G. Bernard Harris LAW '48
Benjamin S. Roth ADL '48, LAW '49
Bennett Yanowitz LAW '49
Richard C. Renkert LAW '50
Harvey H. Starkoff ADL '48, LAW '50
August A. Maran CLC '49, LAW '51

R. William Rosenfeld, PhD LAW '51,
GRS '72, GRS '76
Joseph J. Smoltz LAW '53
Gary Alan Banas LAW '57
Carey M. Yelton, Jr. LAW '57
Patricia A. Wilbert LAW '57
Kenneth E. Reiber LAW '59
David E. Waddell LAW '59
Bruce L. Newman LAW '61
Garth E. Griffith LAW '64
Prof. Anthony S. Zito, Jr. ADL '64, (LAW '67, '68)

Wilson A. Leece, II LAW '68
Fred A. Stevens LAW '72
Edward J. Putka LAW '76
Cheryl J. Parker LAW '79
Lillian M. Braun LAW '80
Laura B. Chisolm WRC '77, LAW '81
Gregory B. Koreness (LAW '99, '01)
Daniel Roy Calamia LAW '06
Michael Lee Spivak LAW '09

The School of Law notes with sadness Professor Chisolm's untimely passing on May 21, 2011. We celebrate her long and enthusiastic service to the law school. She will be sorely missed by her colleagues and students.

Laura Brown Chisolm died peacefully at home in Cleveland Heights on Saturday afternoon, May 21, 2011 surrounded by family and friends, after a brave and inspiring fight against metastatic breast cancer. Her family, colleagues, and many friends of all ages will greatly miss her brilliance, beauty, generosity, and sense of humor. A gathering to honor Laura's life was held on Thursday, May 26, at the Cleveland Botanical Garden in Cleveland, Ohio.



Born Laura Lois Brown in Washington, DC on January 3, 1948, she grew up in Bethesda, Maryland with her father and mother, Joseph E. Brown and Elizabeth Hamlin Brown, and two sisters, Linnea and Kathleen. She attended Bethesda public schools and then began college at the University of Maryland. Laura met the love of her life, Guy Maxwell Chisolm III, and they married in June, 1969. When their daughter Adrienne was born in 1971, Laura put her own college on hold for a few years, later completing a B. A. at Case Western Reserve University, and in 1981 graduating from the School of Law, first in her class. She won numerous academic awards, served on the Law Review, and graduated summa cum laude.

After graduating, Laura spent three years at the Institute for Child Advocacy in Cleveland. She then became a member of the faculty at Case Western Reserve University School of Law, where she taught courses in Property, Legislation, Nonprofit Organizations, and Wills and Trusts. Professor Chisolm published articles on political involvement by tax-exempt organizations and studied other legal

issues affecting them. She was actively involved in the University's Mandel Center for Nonprofit Organizations, was appointed Reporter to the Uniform Law Commission Project on the Regulation of Charities, chaired the Important Developments Subcommittee of the ABA Tax Section's Committee on Exempt Organizations, and was active in the Nonprofit Forum based at New York University.

Laura was thrilled and delighted when granddaughter Natalie Lauralise Stephens was born in August 2010.

Laura appreciated the care she received from the doctors, nurses, and other caregivers at Cleveland Clinic, and her family wishes to thank them for their dedication. She is survived by her husband Guy Chisolm, Vice Chair of Cleveland Clinic's Lerner Research Institute; daughter Adrienne Chisolm Stephens, son-in-law James B. Stephens and granddaughter Natalie Stephens of Carrboro, N.C.; sister Linnea Dayton and brother-in-law Paul Dayton, and sister Kathleen Brown, all of San Diego, California. She was a devoted sister-in-law, aunt and great aunt.

Contributions may be made in Laura's honor to the Breast Cancer Vaccine Fund of Cleveland Clinic's Lerner Research Institute, the Nature Center at Shaker Lakes, Heifer International, or Groundworks Dance Theater.



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